SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL No. 234, PETITIONERS,

vs.

STATE OF FLORIDA, EX REL., J. TOM WATSON, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 22, 1944.

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[fols. 1-4] **IN CIRCUIT COURT OF DUVAL COUNTY**

BILL OF COMPLAINT—Filed October 8, 1943

To the Honorable Judges of the above styled court:

Comes now the State of Florida on the relation of J. Tom Watson, as Attorney General of the State of Florida, and brings this its bill of complaint against Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, as defendants, and shows:

1

That defendant United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, is a labor union affiliated with the American Federation of Labor, said Local having its office and meeting place in the City of Jacksonville, Duval County, Florida. That the defendant Leo H. Hill is the duly authorized Business Agent of said defendant United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, and he is a citizen and resident of the City of Jacksonville, Duval County, Florida.

2

That the Legislature of the State of Florida in regular session in 1943, enacted Chapter 21968, Laws of Florida, Acts of 1943, regulating the activities and affairs of labor unions, their officers, agents, members, organizers and other representatives, and required that every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually, on or before July [fol. 5] 1, 1943, showing: (1) The name of the labor organization; (2) the location of its offices; (3) the name and address of the President, Secretary, Treasurer and Business Agent.

Plaintiff alleges that notwithstanding provisions of said acts required in making said report by labor organizations operating in the State, the defendant United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, has failed and refused and does now fail and refuse to file said report required by said act, and Plaintiff has attached sheets and made a part hereof as

Exhibit A, a certificate of the Secretary of State to the effect that said report has not been filed.

3

That said Chapter 21968 requires that any person who shall for pecuniary or financial consideration act, or attempt to act, for any labor organization in: (A) the issuance of membership or authorization cards, work permits or any other evidence of rights granted and claimed in or by the labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees, shall first secure a license as Business Agent from the State of Florida upon and for that purpose shall duly file application with the Secretary of State. Plaintiff alleges that the defendant Leo H. Hill is the Business Agent of said United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, and is acting for said organization in the issuance of membership, authorization cards or work permits for and on behalf of said labor organization and in soliciting and receiving from employers [fol. 6] rights and privileges for and on behalf of employees who are members of said labor organization, but that he has not complied with said Chapter 21968 by filing application with the Secretary of State for a license to act as Business Agent for said labor union and has wholly failed and refuses to apply for such license and is not licensed by the State of Florida to act as Business Agent for said labor union, and Plaintiff has attached hereto and made a part hereof as Exhibit A, a certificate of the Secretary of State to such effect.

4

Plaintiff alleges that unless and until the said defendants duly comply with Chapter 21968, they are acting illegally and in violation of the laws of this State; that no adequate remedy at law, save injunction is available to Plaintiff to compel said labor union as a group to comply with Chapter 21968 in the particulars alleged; that said defendant Leo H. Hill is committing numerous acts as Business Agent for said labor union from day to day which, so long as he remains unlicensed, under said Act, is illegal and wholly in disregard of the regulatory police powers of the State; that Plaintiff has no adequate remedy at law against the continuous, numerous and daily illegal acts of said defendant

Leo H. Hill; that the acts of said defendant in operation as a labor union and as Business Agent therefor, are so numerous and severable, that to attempt to bring proceedings against all and singular would require a multiplicity of suits, proceedings and prosecutions, costly and expensive and burdensome to the Courts.

[fol. 7] Wherefore, Plaintiff prays:

1. That this Honorable Court will take jurisdiction of this cause and the parties.

2. That this Honorable Court will issue temporary injunction enforcing and restraining the said defendant United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Local #234, its officers, and members from operating as a union, to require membership in said union, or payment of fees or dues to said union, by any person or persons before same can work for the St. Johns River Shipbuilding Company of Jacksonville, Florida, or any other employer in Duval County, unless and until said union fully complies with the provisions of Chapter 21968, Laws of Florida, Acts. 1943.

3. That this Honorable Court enter temporary injunction enjoining and restraining the said defendant Leo H. Hill from acting as Business Agent for said defendant, United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, Local #234, within the meaning and intent of said Chapter 21968, Laws of Florida, Acts 1943, unless and until said defendant fully complies with and is licensed as a Business Agent for said Local labor union under said Act.

4. That upon final hearing that the Court make said temporary injunction permanent unless and until defendants duly comply with Chapter 21968, Laws of Florida Acts 1943.

And Plaintiff will ever pray, etc.

J. Tom Watson, Attorney General.

[fol. 8] Lawrence A. Truett, Assistant Attorney General:
R. W. Ervin Jr. Assistant Attorney General.

Duly sworn to by J. Tom Watson. Jurat omitted in printing.

Exhibit "A" to Bill of Complaint

State of Florida, ss:

Office Secretary of State

I, R. A. Gray, Secretary of State of the State of Florida, do hereby certify that, according to the records of this office, United Association of Journeymen, Plumbers and Steam Fitters of the United States and Canada, Local #234 has not filed any report under Chapter 21968, Laws of Florida, Acts of 1943, as a Labor Union; and it is further certified that there has been no Application made by Leo [fol. 9] H. Hill of Jacksonville, Florida, for Business Agents License for the above named Union.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 7th day of October, A. D. 1943.

R. A. Gray, Secretary of State.

Great Seal of The State of Florida.

In Circuit Court of Duval County

Defendants' Answer and Defensive Pleadings—Filed December 6, 1943

Comes now Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, by their attorneys, Jennings & Coffee, and for answer to the Bill of Complaint, or to so much thereof as these defendants are severally advised it is necessary for them to answer, ans answering say:

The defendants admit that the plaintiff, J. Tom Watson, is the Attorney General of the State of Florida, but deny that the said J. Tom Watson as such Attorney General is authorized by any valid law to maintain and prosecute this suit against the defendants.

1

[fol. 10] Answering paragraph numbered one of the bill of complaint, the defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, admits that it is a labor union, and that it has its principal office and meeting place in the City of Jacksonville, Duval County, Florida. It avers further in

answer thereto that it is an unincorporated group of workmen engaged in the craft of plumbing, and that it is affiliated with an International Union of Journeymen Plumbers and Steamfitters of the United States and Canada, which said International Union, also unincorporated, is affiliated with the American Federation of Labor.

The defendants severally admit that Leo H. Hill is the duly authorized Business Agent of the defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234; that he is a citizen and resident of the City of Jacksonville, Duval County, Florida, and that he has been a citizen and resident as aforesaid for many years, and that he has been the duly authorized, elected and functioning Business Agent or Representative of said Union for a long period of time, to-wit, many years.

2

Answering paragraph numbered two of the bill of complaint, defendants severally admit that a Bill went through both Houses of the Legislature of the State of Florida, at its regular session in 1943, which said Bill is found among the session laws of said State as Chapter 21968, Laws of Florida, Acts of 1943, and which said Bill was denominated House Bill 142, and which, by its terms, provides that labor organizations operating in said State shall report in writing to the Secretary of State, the matters and things in said [fol. 11] paragraph of the bill of complaint as alleged, but aver that said Bill and Chapter was not legally and duly enacted by the Legislature of the State of Florida in that the same was not passed in accordance with the laws and rules of the Legislature as will more fully appear from the Journals of the House of Representatives and of the State Senate of said Legislature.

Further answering paragraph numbered two of said bill of complaint, these defendants severally admit that they have not filed the report provided for in said Bill and Chapter for the reason that they do not believe that the said Bill was duly enacted into law as required by the Constitution and Laws of the State of Florida and the rules of the House of Representatives and of the State Senate of the State of Florida, and for the further reason that they are informed, and verily believe, and so allege, that said Bill and Chapter is in contravention of the Con-

stitution of the United States of America, and of the Constitution of the State of Florida, which will be set forth hereinafter in great detail and is incorporated by reference as a part of defendants' answer severally to paragraph numbered two as fully and completely as if set forth in haec verba. The motion to dismiss is made part of this answer by special reference thereto, M. W. L. Judge, March 1st, 1944.

3

Answering paragraph numbered three of the bill of complaint, these defendants severally deny the several material allegations of said paragraph numbered three and require strict proof.

Further answering paragraph numbered three of the bill of complaint these defendants severally answering the [fol. 12] several allegations thereof admit that the Bill and Chapter as alleged therein contains substantially the provisions in said paragraph numbered three as cited, and admit that Leo H. Hill is the Business Representative of the defendant union and that he receives compensation as said Business Representative; defendants admit that the terms Business Representative and Business Agent are often used interchangeably, and do not make any point of the fact that the defendant, Leo H. Hill, is Business Representative rather than Business Agent except and insofar as the word agent may have a general technical meaning; defendants, however, deny that the defendant, Leo H. Hill, is the Business Agent of said defendant union in the technical legal sense that he is authorized or empowered to do any and all things that a fully authorized agent could do any perform, but on the contrary aver and allege that he, the said Leo H. Hill, is limited as Business Representative to the charter and by-laws of the defendant Union and its International Union; that the defendant, Leo H. Hill, is without power under the Charter and by-laws of the defendant Union and its International to issue membership cards, authorization cards, work permits or other rights granted and claimed in and by the defendant union, but that membership in said Union is only by vote of the members of defendant union, and any work permits or other authorization cards issued by the defendant, Leo H. Hill, are by special permission of the Union, and subject to the confirmation and ratification; that no inherent

fundamental or basic right is vested in the said Leo H. Hill in the premises.

Further answering paragraph numbered three of the bill of complaint, defendants severally aver that if and when the said Leo H. Hill solicits and receives from employers [fol. 13] privileges for and on behalf of employees who are members of the defendant union, he does so as a member of said union, and not necessarily as its Business Agent or Business Representative; that many members of said Union and Committees acting for and on behalf of it do and perform the acts charged to the defendant, Leo H. Hill.

Defendants severally admit that the defendant, Leo H. Hill, has not applied for a license, and is not licensed by the State of Florida as Business Agent for the defendant union, but defendants severally aver that in addition to the reasons set forth hereinabove that the Bill and Chapter on which the bill of complaint is predicated is null and void and without effect and in contravention of the Constitution of the United States of America and of the State of Florida, and was not enacted in compliance with the laws governing and the rules of the House of Representatives and the State Senate of the Legislature of the State of Florida, as will hereinafter appear in detail, and which are incorporated by reference as a part of defendants' answer to paragraph numbered three as fully and completely as if the same were set forth in haec verba. The Motion to dismiss is made part of this answer by special reference thereto. M. W. Lewis, Judge. March 1st, 1944.

4

Answering paragraph numbered four of the bill of complaint, the defendants severally deny the several allegations therein contained and require strict proof.

Further answering paragraph numbered four of the bill of complaint defendants severally deny that the plaintiff is without remedy at law save by injunction or that the de- [fol. 14] fendant Union or the defendant, Leo H. Hill, are acting in disregard of the regulatory police powers of the State.

Defendants further answering said numbered paragraph severally aver and allege that any of their acts and doings are not contrary to the police powers of the State of Florida, or any reasonable interpretation thereof; that they are not

in contravention of the public safety, the public health, the public morals or the general welfare of the people of the State of Florida; that on the contrary the acts and doings of these defendants severally are in keeping with a high concept of the public safety, health, morals and general welfare of the people of the State of Florida.

And the defendants severally having fully answered the bill of complaint of plaintiff severally move to dismiss the same on the following grounds and for the following reasons severally, to-wit:

1

There is no equity in the bill.

2

The bill shows on its face, by its several allegations, that the plaintiff is not entitled to injunctive relief.

3

The allegations of fact contained in the bill of complaint do not state a sufficient basis for the relief sought.

4

Notwithstanding all of the allegations of the bill of complaint, it is not shown that the defendants, or either of them, have violated any valid statute of the State of Florida.

[fol. 15]

5

The bill of complaint fails to sufficiently allege the entity of the defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, so as to make it a subject for the relief sought, or to vest in this Court jurisdiction over it.

6

The bill of complaint, and each allegation thereof, severally states incorrect legal conclusions of the pleader.

7

The bill of complaint is so vague, uncertain and indefinite as to prevent, and make impossible and impracticable, the defendants from preparing their defense.

8

Chapter 21968, Laws of Florida, Acts of 1943, is in violation and derrogation of the Constitution of the State of Florida.

9

Chapter 21968, Laws of Florida, Acts of 1943, is in violation and derrogation of the Constitution of the United States of America.

10

The operation and enforcement of Chapter 21968, Laws of Florida, Acts of 1943, threatens the invasion and destruction of rights, privileges and immunities guaranteed and secured to the defendants by the Constitution and laws of the United States and of the State of Florida, and will invade and destroy the personal and property rights of the defendants resulting in a multiplicity of suits and work irreparable injury on defendants and all those in their class.

[fol. 16]

11

Chapter 21968, Laws of Florida, Acts of 1943, purports to regulate the relations of employees and employers engaged in interstate commerce, producing goods for interstate commerce, and engaged in occupations affecting interstate commerce, and purports to regulate the activities of labor organizations, national in character, whose activities in the State of Florida are incidental to their national activities, and purports to regulate local subdivisions of such labor organizations, the power to regulate interstate commerce being within the exclusive province of the United States Government within the meaning of Article I, Section 8, of the Constitution of the United States.

12

Chapter 21968, Laws of Florida, Acts of 1943, particularly Section 9 (3) and (10) violates the Thirteenth Amendment of the United States Constitution in that said alleged statute purports to restrict free activities of members of labor unions and require involuntary servitude by prohibiting cessation of work under certain conditions.

13

Chapter 21968, Laws of Florida, Acts of 1943, particularly by Sections 4, 5, 6, 7 and 9, violates Article I, Section 10, and Section I of the 14th Amendment to the Constitution of the United States, and Section 17, Declaration of Rights of the Constitution of the State of Florida, in that said alleged statute purports to impair, interfere with and modify the obligations and agreements mutually assumed by and among members, local subdivisions, officers and agents of labor organizations and by and between said [fol. 17] organizations and employees and others, and to have retroactive effect with respect thereto. It impairs and interfer-s with the rights, privileges and immunities of said labor organization and the members thereof to enter into and conclude agreements by and among themselves, by, with and through their mutual associations and with employers and others.

14

Chapter 21968, Laws of Florida, Acts of 1943, violates Article VI of the Constitution of the United States in that said alleged act is in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Ann., and in that said act is in conflict with and violates the public policy and law of the United States with respect to employees engaged in interstate commerce, or engaged in occupations affecting interstate commerce, as laid down in Section 151 of said Code, and it is further in conflict with and violates and seeks to abrogate the rights and privileges conferred on all of such workers by Sections 157 and 158 of said Code aforesaid.

15

Chapter 21968, Laws of Florida, Acts of 1943, deprives labor unions and the members of labor unions and the defendants herein and the members of defendant unincorporated association of liberty and property without due process of law, and specifically of the fundamental right of free speech and freedom of the press and the right to peacefully assemble and to petition for redress of grievance guaranteed to them by Sections 1, 12, 13 and 15 of the Constitution of the State of Florida and the First Amendment to the Constitution of the United States, which is secured against

abridgement by the States by the Fourteenth Amendment to the Constitution of the United States in the following particulars, to-wit:

[fol. 18] (a) Chapter 21968, Laws of Florida, Acts of 1943, by various sections, and among others by the terms of Sections 4, 5, 6, 7, 8 and 9, thereof, forbid persons and groups of persons to assemble together and freely discuss their desires as to joining a labor union, and forbid persons or groups of persons from attempting to persuade others to join a labor organization or from otherwise giving publicity to the advantages and benefits of joining a labor organization, to use peaceful persuasion and lawful publicity to enlarge the membership of a labor union and to make known the provisions of the National Labor Relations Act and the bargaining rights of labor unions under said acts, and otherwise to exercise the inherent and fundamental right to speak freely and to state the true and actual facts relating to labor unions, or in any industrial controversy or otherwise to engage in the activities or to attempt to achieve the objectives and purposes of labor organizations as hereinabove set forth unless the said person or persons or the groups so assembling adopt certain rules and regulations governing its operations and decisions, activities and elections, and file certain designated documents with the officers of the state as a prerequisite, to the exercise of said constitutional rights.

(b) (Chapter 21968, Laws of Florida, Acts of 1943, by its various sections is an arbitrary and unreasonable interference with and prohibition upon labor unions and their members and the defendant union herein and the members of defendant union unincorporated association in its constitutional right to conduct its own lawful internal and mutually agreeable affairs, and in its constitutional right to engage in the activities of a labor organization and the members thereof.

[fol. 19] 16

By virtue of the foregoing Chapter 21968, Laws of Florida, Acts of 1943, deprives labor unions and their members of liberty and property without due process at law, and abridges their privileges and immunities and denies them the equal protection of the law contrary to Sec-

tion I of the Fourteenth Amendment to the Constitution of the United States, and to Section I, Declaration of Rights of the Constitution of the State of Florida; and, further by virtue of the fact that said statute denies to certain labor unions and the members thereof privileges and immunities and equal protection of the laws allowed all other classes of citizens of the State of Florida, said statute is applicable solely to certain labor unions and all other voluntary associations are exempt, and arbitrarily applies to labor unions limitations, restrictions, injury and interference not applied to any corporation or group other than labor unions, in violation of the Constitution of the State of Florida. The provisions of said statute are on arbitrary selection of certain labor unions and members, based on an arbitrary distinction without any foundation.

Sections 4, 5, 6, 7, 8 and 9 of said statute are further unconstitutional because they are an attempt to regulate by law the internal affairs of a labor organization to impose upon the members of such organization certain requirements, duties and obligations, deny to them the right to retain their present rights, privileges and benefits of membership in an unincorporated association, deprive them of their personal and property rights as individuals and as a group, and constitute an arbitrary interference with labor unions and their members in their constitutional right to conduct their own lawful internal affairs, and said [fol. 20] sections applying only to certain labor unions are not a reasonable, natural or just classification, but constitute an artificial or arbitrary distinction having no basis in law.

17

Section 4 of Chapter 21968, Laws of Florida, acts of 1943, is unconstitutional in that it deprives citizens of the United States of rights under the Constitution of the United States and of the State of Florida, in all cases where their citizenship has been held for a period of less than ten years. It discriminates against a member of a labor union who is a citizen from birth, but who has not resided in the United States for a full period of ten years next prior to making application for business agent's license. It deprives all aliens from privileges and opportunities afforded them by voluntary associations of fellow employees.

18

Section 15, Chapter 21968, Laws of Florida, Acts of 1943, violates Section I, XIV Amendment of the Constitution of the United States, being discriminatory in that railroad unions and their members are exempt from the Act.

19

Subsection (3) of Section 9 of Chapter 21968, Laws of Florida, Acts of 1943, violates Section I of the XIV Amendment of the Constitution of the United States in that it discriminates against minorities in favor of majorities with respect to the right to strike.

20

Chapter 21968, Laws of Florida, Acts of 1943, constitutes an improper arbitrary and unreasonable exercise of the State's police power, the restrictions provided therein being without rational basis and not justified by existint circumstances.

[fol. 21] 21

Chapter 21968, Laws of Florida, Acts of 1943, is in conflict with and violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States in that the said bill in its various provisions is so vague and indefinite and uncertain as to meaning that the things and matters therein sought to be prohibited are not capable of reasonable ascertainment in that, among others:

(a) The term "labor organization" as defined in Section 2 (1) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

(b) The term "business agent" as used in Section 2 (3) is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

(c) The whole of Section 4, and particularly the clauses, "No person shall be granted a license or a permit to act as a business agent in the State of Florida, who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior

to making application for such license or permit"; "Who has been convicted of a Felony"; "Who is not a person of good moral character"; "a statement signed by the president and secretary of the labor organization"; "showing his authority so to do"; "any person may file objections"; "a Board"; "shall find that the applicant is qualified"; "the public interest requires that a license or permit should be issued to such applicant"; "Board shall by resolution authorize;" "unless sooner surrendered", is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

(d) The whole of Section 5 is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

[fol. 22] (e) The whole of Section 8 is so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

(f) The whole of Section 9, and particularly the phrase in (1) "interfere with or prevent the right of franchise" and the clause in (2) "To prohibit or prevent any election of the officers of any labor organization"; in (4) "referred to in subsection 3"; subsections (10), (11) and (12); as used in said Section are so vague and indefinite as to meaning as to be not susceptible of reasonable ascertainment and application.

22

Chapter 21968, Laws of Florida, Acts of 1943, being a penal statute, is subject to strict construction and the invalid and unconstitutional sections and parts of the said Act, and the valid sections or parts, if any, are so interwoven and connected one with the other, and so dependent one upon the other, that it is apparent the Legislature would not have enacted and passed the valid sections or parts, if any, without enacting or passing the invalid sections and parts. Therefore, the invalid sections and parts defeat and destroy the intention of the Legislature in the enactment of said Act, and the valid sections and parts, if any, must fail with the invalid sections and parts.

Wherefore, defendants severally pray that the bill of complaint in this cause may be dismissed and that they

may be allowed severally to go hence with their costs in this behalf most wrongfully sustained.

Jennings & Coffee. By Lester W. Jennings, Jacksonville, Florida. Joseph A. Padway, Washington, D. C., Attorneys for the Defendants Severally.

[fol. 23] IN CIRCUIT COURT OF DUVAL COUNTY

MOTION TO STRIKE ANSWER OF DEFENDANTS—Filed Dec. 15, 1943

Comes now the State of Florida on the relation of J. Tom Watson, as Attorney General of the State of Florida, and moves the court to strike the answer heretofore filed in this cause by the defendants herein, and each and every paragraph thereof, separately and severally, and assigns the following grounds, separately and severally, as to the answer and each and every paragraph thereof;

1. It is not shown that there is any necessity for there to be any law authorizing the Attorney General to bring this suit.

2. It is apparent that the Attorney General is fully within his powers as Attorney General of the State of Florida in instituting this suit.

3. Same contains the conclusions of law of the pleader.

4. Same presents immaterial issues.

5. Same confesses the material allegations of the bill of complaint and does not set forth matter in avoidance of same.

6. Same is vague, indefinite and uncertain.

7. Same presents matters of law rather than questions of fact for the determination of this Court.

8. Same is in effect a motion to dismiss the bill of complaint rather than an answer as prescribed by law and the practice of this court in chancery matters.

[fol. 24] 9. Same contains conclusions of fact of the pleader.

10. Same presents no defense to the bill of complaint.

J. Tom Watson, Attorney General; Lawrence A. Truett, Assistant Attorney General; R. W. Ervin, Jr., Assistant Attorney General.

IN CIRCUIT COURT OF DUVAL COUNTY

ORDER DENYING MOTION TO STRIKE ANSWER—March 1, 1944

The motion to strike the Answer is hereby denied.

Done And Ordered in Chambers, at Jacksonville, Duval County, Florida, this the 1st day of March, 1944.

Miles W. Lewis, Judge.

IN CIRCUIT COURT OF DUVAL COUNTY

ORDER DENYING MOTION TO DISMISS—March 1, 1944

This cause came on this day to be heard and was argued and considered.

[fol. 25] The motion to dismiss the bill of complaint as a whole is denied. I think that the provision of Section 4 of the law before this Court which provides that if the Board are of the opinion that the public interest requires that a license or permit should be issued to an applicant, then the Board shall by resolution authorize the Secretary of State to issue such license or permit to a business agent, is invalid in so far as it undertakes to make the Board the judge of what is in the public interest. The Board should issue the permit to a business agent who can qualify under Divisions (1), (2) and (3) of Section 4. I think Section 6 is valid. I do not consider that the question as to whether or not some of the other provisions of the Act are Constitutional or not, or valid, is before this Court for decision under the bill as drawn because although some of the provisions of the Act may be unconstitutional and invalid, I don't think the Act is invalid as a whole.

Done And Ordered in Chambers, at Jacksonville, Duval County, Florida, this the 1st day of March, 1944.

Miles W. Lewis, Judge.

IN CIRCUIT COURT OF DUVAL COUNTY

STIPULATION AS TO PLEADINGS, DECREE AND APPEAL—Filed June 22, 1944

Comes now the State of Florida, ex rel., J. Tom Watson, as Attorney General, of the State of Florida, Plaintiff, and [fol. 26] Leo H. Hill and United Association of Journeymen

Plumbers and Steamfitters of United States and Canada, Local #234, Defendants, parties to the above entitled cause, by their undersigned solicitors, and stipulate and agree as follows:

1. That the order in said cause entered by the Hon. Miles W. Lewis in the above entitled Court on, to-wit, the 1st day of March A. D., 1944, denying defendants' several motions to dismiss the bill of complaint is predicated upon the pleadings.

2. That no testimony was taken or evidence offered to the Special Master, Claude Ogilvie, appointed by order of said Court on March 1, A.D., 1944, within the seventy-five day period allowed for the taking of such testimony, because it was satisfactorily agreed between the parties hereto that the cause be determined upon the pleadings without the taking of testimony.

3. That the Court do forthwith enter its final decree in said cause upon the pleadings before it as the said Court may be advised, it being specifically understood and agreed between the parties hereto that they do not agree to or concur in such final decree so as to preclude them, or either of them, from appealing said cause to the Supreme Court of Florida, or any other appropriate appellate Court having jurisdiction to consider the same.

4. That the filing of notice of appeal after the entry of final decree shall be taken and construed to supersede the final decree of the Circuit Court in and for Duval County, without the necessity of the fixing or making of any supersedeas bond; provided that it is understood that such supersedeas shall not operate save in the instant case, to preclude the State of Florida from enforcing the provi-
[fol. 27] sions of Chapter 21968, Acts 1943, in any other situation which may arise under said Chapter.

State of Florida, ex rel., J. Tom Watson, as Attorney General of the State of Florida. By R. W. Ervin, Jr., Solicitors for Plaintiff.

Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234. By Jennings & Coffee, by Lester W. Jennings.

IN CIRCUIT COURT OF DUVAL COUNTY

FINAL DECREE—Filed June 22, 1944

This cause coming on for final hearing upon the pleadings and the stipulation of the parties, and the parties being present by their respective counsel, it is Considered, Ordered, Decreed And Adjudged as follows:

1. That under the pleadings the only provisions of Chapter 21968, Laws of Florida, Acts of 1943 before the Court for determination of their constitutionality are Sections 4, and 6 of said Chapter, consequently the constitutionality of other provisions of the Chapter is not adjudicated in this decree.

[fol. 28] 2. That Section 4 of said Chapter is valid except that part thereof which reads, "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant"; and the court orders, decrees and adjudges that the language, "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant" is invalid for indefiniteness and other reasons, it being the opinion of this court that licenses should issue under said Chapter and Section to business agents for labor organizations when the qualifying requirements of said Section, exclusive of the quoted clause herein declared invalid, have been complied with; and that business agents for labor organizations be required to obtain such licenses under said Chapter accordingly. In this connection it is noted that Section 16 of said Chapter provides that invalidity found in any particular provision of said law shall not affect the validity of other provisions of the Chapter not found invalid.

3. That Section 6 of said Chapter is valid.

4. That the Defendant, Leo H. Hill, unless he shall within fifteen (15) days from the entry of this decree, duly apply for and procure under said Section 4 a business agent's license to act for said Defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, be, and he is hereby enjoined and restrained from, and after the expiration of said fifteen days' period, from acting as business agent for said labor

organization until he shall thereafter duly procure said license.

5. That the Defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Can-
[fol. 29] ada, Local #234 unless it shall within fifteen (15) days from the entry of this decree make the report and pay the One Dollar fee required by said Section 6, be, and it is hereby enjoined and restrained from, and after the expiration of said fifteen days' period, from functioning and operating as a labor organization or labor union, until it shall thereafter duly make such report and pay said fee.

Done and Ordered in Chambers within said Circuit this 22nd day of June, A. D. 1944.

Miles W. Lewis, Judge.

IN CIRCUIT COURT OF DUVAL COUNTY

NOTICE OF APPEAL—Filed June 27, 1944

The Defendants, Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, Severally take and enter this their appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court of Duval County, Florida, bearing date the 22nd day of June A. D. 1944, entered in the above styled cause, and recorded in the records of said Court in Chancery Order Book, 338, at page 295, and all parties to said cause are called upon to take notice of the entry of this appeal.

Jennings & Coffee, By Lester W. Jennings, Solicitors for Defendants.

[fol. 30] Done and entered this 27th day of June A. D. 1944.

Elliot W. Butts, Clerk. By E. H. Griffin D. C.

IN CIRCUIT COURT OF DUVAL COUNTY

ASSIGNMENT OF ERRORS—Filed June 27, 1944

Now comes the Defendants, Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, by their solicitors

or record, and severally file this, the assignment of errors that they, and each of them, intend to rely upon for reversal in the Supreme Court, said assignment of errors being filed at the time when said defendants are applying to the Clerk of the Circuit Court for a transcript of the record in the above stated cause.

And the said named Defendants, and each of them severally, respectfully show that in the record and proceedings aforesaid, and also in the rendition of the order, decree or judgment in said cause, manifest error hath occurred in this:

Assignment of Error No. 1

The Court erred in the entry of its order, judgment or decree on, to-wit, the 22nd day of June A. D. 1944, which said order judgment or decree is recorded in Chancery Order Book 338, at page 295, of the records of said Court, in finding against the defendants and for the Relator herein.

Assignment of Error No. 2

The Court erred the entry of its said order, judgment [fol. 31] or decree rendered on, to-wit. The 22nd day of June A. D. 1944, and recorded in Chancery Order Book 338, at page 295, of the records of said Court, in finding that Section Four of Chapter 21968, Laws of Florida, Acts of 1943, is valid, except that part thereof which reads, "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant."

Assignment of Error No. 3

The Court erred in the entry of its order, judgment or decree, on, to-wit, the 22nd day of June A. D. 1944, which said order, judgment or decree is recorded in Chancery Order Book 338, at page 295, of the records of said Court; in finding that Section Six of Chapter 21968, Laws of Florida, Acts of 1943, is valid.

Assignment of Error No. 4

The Court erred in the entry of its order, judgment or decree, rendered in the above styled cause on, to-wit, the 22nd day of June A. D., 1944, which said order, judgment or decree is recorded in Chancery Order Book, 338, at page

295, of the records of said Court, in finding that the Defendant, Leo H. Hill, unless he shall within fifteen days from the entry of said decree do apply for and procure under Section Four of said act, the business agent's license to act for the Defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, be enjoined and restrained from acting as business agent for said labor organization.

Assignment of Error No. 5

The Court erred in the entry of its order, judgment or decree rendered in the above styled cause on, to-wit, the 22nd day of June A. D., 1944, which said order, judgment or decree is recorded in Chancery Order Book 338, at page [fol. 32] 295, of the records of said Court in finding that the Defendant, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, unless it shall within fifteen days from the entry of said decree make the report and pay the fee required by Section Six, of Chapter 21968, Laws of Florida, Acts of 1943, be enjoined and restrained from functioning and operating as a labor organization or labor union.

Assignment of Error No. 6

That Court erred in the entry of its order rendered in the above styled cause on, to-wit, the 1st day of March A. D., 1944, which said order is recorded in Chancery Order Book 331, at page 138, of the records of said Court, which said order denied the motion made by Defendants severally to dismiss the bill of complaint filed in said cause.

Assignment of Error No. 7

The Court erred in the rendition of its order entered in said cause on, to-wit, the 1st day of March A. D. 1944, which said order is recorded in Chancery Order Book 331, at page 138, of the records of said Court, in finding that Section Four of Chapter 31968, Laws of Florida, Acts of 1943, is valid, except as to that portion thereof which undertakes "to make the Board the judge of what is in the public interest."

Assignment of Error No. 8

The Court erred in the rendition of its order dated the 1st day of March A. D. 1944, which said order is recorded

in chancery Order Book 331, at page 138, of the records of said Court, in finding that Section Six of Chapter 21968, Laws of Florida, Acts of 1943, is valid.

[fol. 33] Assignment of Error No. 9

The Court erred in the rendition of its order, on, to-wit, the 1st day of March, A. D. 1944, recorded in Chancery Order Book 331, at page 138, of the records of said Court, in finding that the question as to whether or not some of the other provisions of the said Chapter 21968, Laws of Florida, Acts of 1943, are constitutional was not before the Court for consideration.

Assignment of Error No. 10

The Court erred in the rendition of its order on, to-wit, the 1st day of March A. D. 1944, which said order is recorded in Chancery Order Book 331, at page 138, of the records of said Court, in finding that Chapter 21968, Laws of Florida, Acts of 1943, is not invalid in its entirety.

Wherefore, appellants contend that the Court erred as hereinbefore set forth, and that the final order, judgment or decree of the said Court entered on, to-wit, the 22nd day of June A. D., 1944, which said order, judgment or decree is recorded in Chancery Order Book 338, at page 295, of the records of said Court should be by the Supreme Court of Florida reversed, and this cause remanded for further proceedings in accordance with the mandate of the Supreme Court.

Respectfully submitted, Jennings & Coffee, by Lester W. Jennings, Solicitors for Appellants.

State of Florida,
County of Duval:

Before me the undersigned authority, this day personally [fol. 34] appeared Betty Rubin, who upon being by me first duly sworn deposes and says: that she is the secretary in the office of Jennings & Coffee, solicitors for defendants, and that she did on, to-wit, the 27th day of June A. D. 1944, mail a full, true and correct copy of the foregoing Assignment of Errors to J. Tom Watson, as Attorney General of

the State of Florida, Plaintiff, by enclosing the said Assignment of Errors in an envelope addressed as follows:

Hon. J. Tom Watson, The Capitol, Tallahassee, Florida

and that the said envelope, so addressed, containing a full, true and correct copy of said Assignment of Errors, properly sealed and having affixed thereto sufficient uncancelled United States postage stamps to transmit the same by first class mail was deposited by her in a United States mailing receptacle in the City of Jacksonville, Florida, on the date aforesaid, and affiant says that the said Assignment of Errors was sent to the usual mailing address of the said party.

Betty Rubin.

Subscribed and sworn to before me this 27th day of June, A. D. 1944. Pauline Bailey, Notary Public, State of Florida, at large. My commission expires on the 14 day of Feb. A. D. 1945. (Notarial Seal.)

[fol. 35] IN CIRCUIT COURT OF DUVAL COUNTY

DIRECTIONS TO THE CLERK RE PREPARATION OF TRANSCRIPT—Filed June 27, 1944

You will please prepare a transcript of the record in the case of State of Florida, Ex Rel., J. Tom Watson, As Attorney General of the State of Florida, Plaintiff, Versus Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, You are hereby directed, to commence the making up of said transcript within the time allowed by law and the rules of Court.

You are directed to make a part of the transcript of the said record and to copy the following papers and proceedings in the same, to-wit:

1. Plaintiff's bill of complaint, filed in said cause on, to-wit, the 8th day of October A. D. 1943.

2. Defendants' answer and defensive pleadings, filed in said cause on, to-wit, the 6th day of December A. D., 1943.

3. Plaintiff's motion to strike answer of defendants, filed in said cause on, to-wit, the 15th day of December A. D. 1943.

4. Order of the Court entered in said cause on, to-wit, the 1st day of March A. D. 1944, and recorded in Chancery Order Book 331, at page 139, which said order [fol. 36] denied plaintiff's said motion to strike answer of defendants.

5. Order of the Court filed in said cause on, to-wit the 1st day of March A. D., 1944, and recorded in Chancery Order Book 331, at page 138, of the records of said Court, which said order denied the motion of the defendants to dismiss the bill of complaint in the entirety.

6. Stipulation of the parties made and entered into and filed in said cause on, to-wit, the 22nd day of June A. D., 1944.

7. Final decree of the Court made and entered in said cause on, to-wit, the 22nd day of June A. D., 1944, and recorded in Chancery Order Book 338, at page 295 of the records of said Court.

8. Defendants' notice and entry of appeal, and the record of same.

9. The assignment of errors, filed herein by the defendants severally, and the affidavit of service thereof upon the plaintiff.

10. These directions to the Clerk as to the making up of the transcript of record herein, together with the affidavit of service thereof upon the plaintiff.

You are further directed to recite the following papers and proceedings in the transcript of record, to-wit:

11. The summons in Chancery issued in said cause on, to-wit, the 8th day of October A. D., 1943.

12. The appearance in the said cause of the defendants severally.

13. The order of the Court made and entered in said [fol. 37] cause on, to-wit, the 1st day of March A. D., 1944, and recorded in Chancery Order Book 331, at page 140, which said order appointed a Special Master in said cause.

You are directed to omit all other and further papers and proceedings in the said cause from the transcript of the record.

Dated this 27th day of June A. D. 1944.

Jennings & Coffee, by Lester W. Jennings, Solicitors for Defendants.

STATE OF FLORIDA,
County of Duval:

Before me the undersigned authority, this day personally appeared Betty Rubin, who upon being by me first duly sworn deposes and says: that she is the secretary in the offices of Jennings & Coffee, solicitors for defendants, and that she did on, to-wit, the 27th day of June A. D., 1944, mail a full, true and correct copy of the foregoing Directions to the Clerk for Preparation of Transcript to J. Tom Watson, as Attorney General of the State of Florida, Plaintiff, by enclosing the same in an envelope addressed as follows:

Hon. J. Tom Watson, The Capitol, Tallahassee, Florida

And that the said envelope, so addressed, containing a full, true and correct copy of said Directions to the Clerk for Preparation of Transcript, properly sealed and having affixed thereto sufficient uncancelled United States postage [fol. 38] stamps to transmit the same by first class mail was deposited by her in a United States mailing receptacle in the City of Jacksonville, Florida, on the date aforesaid, and affiant says that the said Directions to the Clerk for preparation of Transcript was sent to the usual mailing address of the said party.

Betty Rubin.

Subscribed and sworn to before me this 27th day of June A. D., 1944. Pauline Bailey, Notary Public, State of Florida, at large. My commission expires on the 14 day of Feb. A. D., 1945. (Notarial Seal.)

[fol. 39] IN CIRCUIT COURT OF DUVAL COUNTY

SUMMONS AND RETURN

On the 8th day of October A. D. 1943, the Summons was issued and returned served by Sheriff on October 11th, 1943. Recited.

IN CIRCUIT COURT OF DUVAL COUNTY

APPEARANCE OF DEFENDANTS—Oct. 20, 1943

On the 20th day of October A. D., 1943, the defendants filed their Appearance by Jennings & Coffee. Recited.

IN CIRCUIT COURT OF DUVAL COUNTY

ORDER APPOINTING SPECIAL MASTER—March 1, 1944

On the 1st day of March, A. D., 1944, the Court entered its Order appointing Claude Ogilvie as Special Master, said Order being recorded in Chancery Order Book 331, at page 140. Recited.

[fols. 40-41] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 42] IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1944 EN BANC

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234, Appellants,

vs.

STATE OF FLORIDA, EX REL., J. TOM WATSON, ATTORNEY GENERAL, Appellee

DUVAL COUNTY

An Appeal from the Circuit Court for Duval County, Miles W. Lewis, Judge, Jennings & Coffee, Joseph A. Padway (Washington, D. C.) and Herbert S. Thatcher, (Washington, D. C.) for Appellants,

J. Tom Watson, Attorney General, Howard S. Bailey and R. W. Ervin, Jr., Assistant Attorneys General, for Appellee

OPINION—Filed November 28, 1944

TERRELL, J.

The Legislature of 1943 enacted Chapter 21968, Sections Four and Six of which are as follows:

"Section 4. No person shall be granted a license or a permit to act as a business agent in the State of

Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, [fol. 43] accompanied by a fee of one Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on "file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act *(and are of the opinion that the public interest requires that a license or permit should be issued to such applicant)*, then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the Secretary or business agent of such labor organization and shall be in such [fol. 44] form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;
(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar."

Appellants declined to comply with the provisions of the act as thus quoted, contending that it was invalid. This suit was brought by the Attorney General to restrain Local 234 from functioning as a labor organization and Leo H. Hill from acting as its business agent pending compliance with the law. A motion to dismiss the bill was overruled. An answer interposed various defenses predicated on the State and Federal Constitutions. On final hearing, Section Six was upheld as valid in toto. As to Section Four, the Court deleted the words "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant", and upheld it in all other respects. This appeal is from the decree so entered.

It appears that the trial court deleted the provision from Section Four because it vested arbitrary power in the Board and was in conflict with the standard of qualification prescribed for one applying for a license to be a business agent of a labor union rendering it unconstitutional. We approve this holding.

It is first contended that Sections Four and Six as quoted and deleted are void because they restrain the exercise of appellants' civil rights guaranteed by the First amendment to the Federal Constitution.

[fol. 45] In essence, Section Four of Chapter 21968 hereafter referred to as House Bill 142, creates a State Licensing Board composed of the Governor, Secretary of State, and the State Superintendent of Public Instruction. All business agents for labor organizations must secure a permit from the State Licensing Board and as a prerequisite for securing such permit they must furnish proof that they have been (A) a citizen of the United States for more than ten years next preceding their application for the permit, (B) have not been convicted of a felony, (C) must be of good moral character and Section Six requires them to accompany the application with a fee of One Dollar.

Similar regulations are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, nurses, beauty parlor operators, civil engineers, architects, liquor dealers, and many others engaged in gainful occupations. All such requirements have been upheld in the interest of the public health, morals, safety, welfare, and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford.

Such regulations have been imposed under the police power of the State and have been generally upheld for reasons so academic that it would hardly seem necessary to cite authority to support them. Appellant's answer to this is that they are like religious associations, law and order leagues, citizens committees and chambers of commerce, and should like these, be exempt from such regulations. Our attention is directed to no similarity between labor unions and the last named institutions and as we shall later show, there is no basis to grant them the same exemption.

Appellants contend that these regulations unduly restrict their freedom of speech, free press, and free assembly. This contention overlooks the fact that none of these guaranties are absolutes but are subject to reason-
[fol. 46] able police regulation in the interest of the public. It would be difficult to name an organization that more vitally affects the public or one in which the public is more vitally interested than the organizations of labor. Their activities and their public relations of late years have frequently pushed the war and every other human relation off the front page. To hold that their agents may not be regulated in the manner prescribed here would amount to a reversal of our holding with reference to every other kindred relation. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1; 57 Sup. Ct. 615, 81 L. Ed. 893; Riley vs. Sweat, 110 Fla. 362, 149 So. 48; Page vs. State Board of Medical Examiners, 141 Fla. 294, 193 So. 82; State ex rel. Munch vs. Davis, 143 Fla. 236, 196 So. 491; State Board of Funeral Directors vs. Cooksey, 147 Fla. 337, 3 So. (2nd) 502.

Appellants also contend that Sections Four and Six of House Bill 142 unduly restrict their right to assemble as

working men, to solicit membership in labor organizations and that the fee charged is an undue restraint on these and other civil rights. They rely on Murdock vs. Pennsylvania, 319 U. S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, and that line of cases to uphold this contention.

The gist of this contention is that they are no different from religious, fraternal, and charitable organizations and should enjoy the same immunity from license or other restraints. The answer to this contention is that religious, fraternal, and charitable organizations are in terms immunized from license taxes and other regulations on the theory that they minister to the spiritual, moral, educa-
[fol. 47] tional and other necessities of the community. They are very largely gratuitous, are not imbued with the profit aspect and there is every reason why they should be so immunized while none of the reasons that immunize them have been shown to be attached to labor organizations.

The Federal Supreme Court has repeatedly upheld acts regulating different phases of employer and labor relations in the interest of the common good. National Labor Relations Board vs. Electric Vacuum Cleaner Co., 120 Fed. (2nd) 611, reversed on other grounds in 315 U. S. 685, 62 Sup. Ct. 846, 86 L. Ed. 1120; American Steel Foundries vs. Tri-City Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189. In the briefs of counsel for the State, our attention is directed to acts by at least eleven other states, Alabama, Kansas, Arkansas, Wisconsin, South Dakota, Idaho, Texas, Michigan, Pennsylvania, Massachusetts, and Minnesota regulating some phase of labor relations. Some of these acts are very similar to the one in question but others are different in some respects. The case of Ex parte Thomas, 141 Tex. 591, 174 S. W. (2nd) 958, is illuminating on the point because in most features, the Texas act is similar to ours and it upholds the power of the State to regulate labor unions under its police power. Casual review of the cases cited would seem to settle the controversy beyond question.

The requirement of Section Six to file annual reports giving (1) the name of the labor organization, (2) the location of its office, and (3) the name and address of its president, secretary, treasurer, and business agent is supported by similar requirements in acts of Kansas, Texas, Wisconsin,

Idaho, South Dakota, and Alabama. The Alabama Act was upheld by the Alabama Supreme Court in State Federation of Labor vs. Robert E. McAdory, — Ala. —, 18 So. (2nd) 810. The opinion treats in a very illuminating manner this and other phases of labor union regulation.

[fol. 48] The charge that House Bill 142 is new legislation hardly merits consideration. In a democracy like ours, regulatory legislation never precedes but always follows a felt necessity or demand for it. No social system could long endure that does not remain responsive to the need for change and flexible enough to modify its legislative patterns to compass the changes. Every form of social organization must be constantly amended to meet new techniques and changing circumstances. Call it progress or liberalism as you will, the instant we lose the incentive, we become static and ultimately perish.

As to the charge of One Dollar for a business agent's license, appellants contend that this is in reality a tax which amounts to a restraint on their civil rights, that is to say the right of workers to assemble for mutual aid and protection, to circulate and disseminate information, to form and join unions and to solicit others to join them.

We see no merit to this contention. The fee of One Dollar is nothing more than a charge to defray the cost of the service. Neither section Four or Six in any way affects the right of workmen to assemble for mutual aid, to circulate information or to organize and invite others to join them. These are all rights this Court has repeatedly recognized. Paramount Enterprises, Inc. vs. Mitchell, 104 Fla. 407, 140 So. 328.

We have reviewed all the cases cited by appellants in support of their contention as to civil rights but their main reliance appears to be on Thornhill vs. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093; Schneider vs. Irvington, 308 U. S. 147, 60 Sup. Ct. 146, 84 L. Ed. 155; Lovell vs. Griffin, 303 U. S. 444, 58 Sup. Ct 666, 82 L. Ed. 949; Hague vs. C. I. O., 307 U. S. 496, 59 Sup. Ct. 954, 83 L. Ed. 1423; Cantwell vs. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900, 84 L. Ed. 1213; Near vs. Minnesota, ex rel., Olson, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. Ed. 1357; A. F. of [fol. 49] L. vs. Swing, 312 U. S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855, and like cases. These cases have all been reviewed in connection with the case at bar as well as in for-

mer decisions of this Court and we think are directed to statutes or ordinances prohibiting the distribution of literature without a special permit depending on the arbitrary discretion of the mayor or some other officer. For this or similar reason, they are not in point with the case at bar.

It is quite true that in Thornhill vs. Alabama, first cited in the preceding paragraph, the Court brought "picketing" within the protection of the Bill of Rights but so far as we have been able to find, organizing labor unions, collective bargaining, boycotting, striking, and other labor practices have been so immunized. It may be that consitions will arise in the future in which other labor practices should be so protected but such a case must await the appropriate conditions. With the facts before us, it certainly would be a tortured construction of the Bill of Rights to hold that other lines of endeavor are subject to police regulation but that labor unions are free from any species of regulation.

Individual freedoms guaranteed by the Constitution did not become such by chance. They were designed as a buffer to personal worth; they have no relation to institutions but they raised man to his full statute, put sand in his "guts" and raised him to a level with kings. Freedom of speech, for example, was first employed to guarantee members of Parliament that they would not be called on the carpet by the king for any discussion they participated in on the floor of the house regarding public affairs. The right was later extended to the citizen as to all political discussion and when our Constitution was adopted, it was first included as one of the fundamental rights available to every citizen.

Labor unions, like other trade, professional and business organizations are concerned with the business of making a [fol. 50] living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, but can it be reasonably contended that Sections Four and Six of House Bill 142 impose any unreasonable burden on them? Section Four requires nothing more than a showing of the Americanism, good moral character, and freedom from felony of their business agents and Section Six requires them to furnish the Secretary of State their name, place of business, and the name and address of the president, secretary, treasurer,

and business agent. Literally thousands of persons and institutions over the country are required by State and Federal Governments to furnish similar information and many of them much more. In fact, the requirement of Section Six goes only to information that is common knowledge in the community where the labor union is located and most of it goes to the public on the communications it sends out.

We have long since gotten away from the idea that human relations which affect the public welfare can be transacted in a moral vacuum. Good moral character and sound Americanism is the very basis on which democratic institutions rest. It permeates every aspect of human relations from the White House down to the most juvenile community enterprise. A boy cannot get into a marble game if he does not play the game in recognition of the moral that his companions have rights that he must respect and the same moral thread runs through business relations, labor relations, and all other relations that affect the public Democratic institutions would go to pot quicker than it would take to tell how except for the moral standard on which they are pitched. It is past understanding that any one who plies his trade, business, or profession for a living should seriously contend that he is footloose in a moral universe with carte blanche to do as he pleases when others in like situation are bound by every restriction the Bill of Rights [fol. 51] will permit. In this state of the law, it would seem idle to say that one's civil rights were unduly hobbled to require him to show his good moral character, that he had been exposed to the American way of life for ten years, that he had not committed a felony, where he is conducting his business, and who is conducting it for him.

The sole test for the exercise of the police power is reasonableness. True, the Legislature cannot under the guise of the police power arbitrarily invade personal or property rights or interfere with private business but if the statute has some rational relation to the safety, health, morals, or general welfare and the means employed may be reasonably said to accomplish the desired purpose, it is within the scope of the police power. The means adopted by the act must be reasonably necessary. They must be reasonable in their effect on the person, must not be oppressive and must not be designed for the annoyance of any particular person or class.

It is next contended that Sections Four and Six of House Bill 142 invade the field covered by the National Labor Relations Act and consequently it is nonenforceable.

This contention proceeds on the presumption that the National Labor Relations Act preempts the field of labor regulation and removes any power on the part of the states to do so. If appellants' contentions were true, the National Labor Relations Act rather than the Act in question would go down under the Constitution. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893; Wisconsin Labor Relations Board vs. Fred Ruepling Leather Co., 228 Wis. 473, 279 N. W. 673. In both these cases it was held that the power of Congress to regulate labor relations rested on the commerce clause while the power of the State rested on the police power and that the State power was supreme when [fol. 52] no undue burden was laid on interstate commerce. Unless interstate commerce is obstructed, the Federal Act may not be called into operation.

It is next contended that House Bill 142 is invalid for discrimination in that Section 15 exempts associations of Railway Employees from its provisions contrary to the equal protection clause of the Fourteenth Amendment.

On this point, it is sufficient to say that all the state acts herein referred to make similar exemptions and none of them that have been assaulted for this reason have been stricken down. In fact, it seems to be a classification common to acts of this kind and one the Legislature was empowered to make. Alabama State Federation of Labor vs. McAdory, —— Ala. ——, 18 So. (2nd) 810; A. F. of L. vs. Reilly, 7 Labor Cases, 65, 168.

In our treatment of House Bill 142, we have observed the line followed by counsel in their briefs. In other words, Sections Four and Six have generally been treated together. It is true that their provisions overlap, but in the main, Section Four applies to the business agent and Section Six applies to the Union or organization. A better practice would have been to recognize this distinction in the opinion but it would have resulted in much duplication and a more tedious discussion. The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as

insurance agents, real estate brokers, and others engaged in occupations that affect the public. The purpose of the regulation is not punic but to preserve the democratic process and bring to the knowledge of the individual or group regulated that it has an obligation to the public that rises above its personal or group interest.

[fols. 53-54] Other questions argued have been considered but we find no reversible error.

Affirmed.

Buford, C. J.; Brown, Chapman, Thomas, Adams and Sebring, J. J., concur.

[fols. 55-56] IN THE SUPREME COURT OF FLORIDA, JUNE TERM A. D. 1944

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN Plumbers and Steamfitters of United States and Canada, Local #234, Appellants,

vs.

STATE OF FLORIDA, ex Rel., J. TOM WATSON, Attorney General, Appellee

JUDGMENT—November 28, 1944

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and argument of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is therefore, considered, ordered and decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellants his costs by him in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Terrell was this day ordeed to be filed.

[fols. 57-58] IN SUPREME COURT OF FLORIDA

MANDATE

The State of Florida

To the Honorable, the Judge of the Circuit Court for the Fourth Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of the Fourth Judicial Circuit of Florida, in and for the County of Duval in a cause wherein J. Tom Watson, as Attorney General of the State of Florida, was complainant, and Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, were defendants, the Decree of said Circuit Court was rendered June 22, 1944, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1944, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 28th day of November A. D. 1944 it was considered by said Supreme Court that the said Decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellants his costs by him in this behalf expended, which costs are taxed at the sum of —— Dollars; therefore,

You are hereby commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Rivers Buford, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 14th day of December, 1944.

(S.) Guyte P. McCord, Clerk Supreme Court of Florida. (Supreme Court Seal.)

[fol. 59] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

NOTICE OF INTENTION TO BRING CERTIORARI

The above named Appellants, Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, severally, give notice that they will in due time and in accordance with the rules of the United States Supreme Court present their Petition for Writ of Certiorari from the Supreme Court of the United States to the Supreme Court of Florida in the above entitled cause from the Opinion and Final Judgment of the Court in said cause.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, Lester W. Jennings, Solicitors for Appellants.

[fol. 60] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

PRAECIPE FOR RECORD

The Clerk of the above entitled Court is requested and directed to forthwith prepare and transmit to the Clerk of the United States Supreme Court a full and complete transcript of the record in the above entitled cause, in order that said transcript may be in the office of the Clerk of the Supreme Court of the United States at the earliest possible time; it being the purpose and intent of the Appellants to present to the Supreme Court of the United States their Petition in Certiorari, together with their Brief in support of the same.

Appellants request that the following items be included in such transcript.

(1) Copy of full and complete transcript from the Circuit Court, in and for Duval County, to the Supreme Court of Florida.

(2) Opinion of the Florida Supreme Court and its Judgment.

[fol. 61] (3) Mandate of the Supreme Court of Florida to the Circuit Court, in and for Duval County, Florida.

(4) Copy of notice of intent to apply for Writ of Certiorari before the United States Supreme Court, together with the directions to the Clerk of the Florida Supreme Court for making up and transmitting the record to the Clerk of the Supreme Court of the United States, together with proof of service upon the Attorney General of the State of Florida of the same.

(5) Any other items or documents on file in your office necessary to make a full and complete record of the entire proceedings in the Supreme Court of the State of Florida.

(6) Your usual certificate and appropriate seal as to the correctness or bona fides of all documents transmitted to the Clerk of the United States Supreme Court.

Joseph A. Padway, Herbert S. Thatcher, Edwin C. Coffee, Lester W. Jennings, Solicitors for Appellants.

[fol. 62] STATE OF FLORIDA,
County of Duval:

Before me the undersigned authority, this day personally appeared Betty Rubin, who upon being by me first duly sworn, deposes and says: That she is the secretary in the offices of Joseph A. Padway, Herbert S. Thatcher, Lester W. Jennings and Edwin C. Coffee, Attorneys for Appellants, and that she did on, to-wit, the 13th day of December A. D., 1944, mail a full, true and correct copy of Notice of Intention To Bring Certiorari and Directions To Clerk to J. Tom Watson, as Attorney General of the State of Florida, by enclosing the same in an envelope addressed as follows:

Hon. J. Tom Watson, Attorney General, The Capitol, Tallahassee, Florida.

And that the said envelope, so addressed, containing full, true and correct copies of said documents and papers aforesaid, properly sealed and having affixed thereto sufficient uncancelled United States postage stamps to transmit the same by first class mail, was deposited by her in a United States mailing receptacle in the City of Jacksonville,

Florida, on the date aforesaid, and affiant says that said documents and papers were sent to the usual mailing address of said party.

Betty Rubin.

Subscribed and sworn to before me this 13 day of December, A. D. 1944. Hortense Clare Arnow, Notary Public, State of Florida at large. My commission expires on the 12 day of November, A. D. 1947. (Seal.)

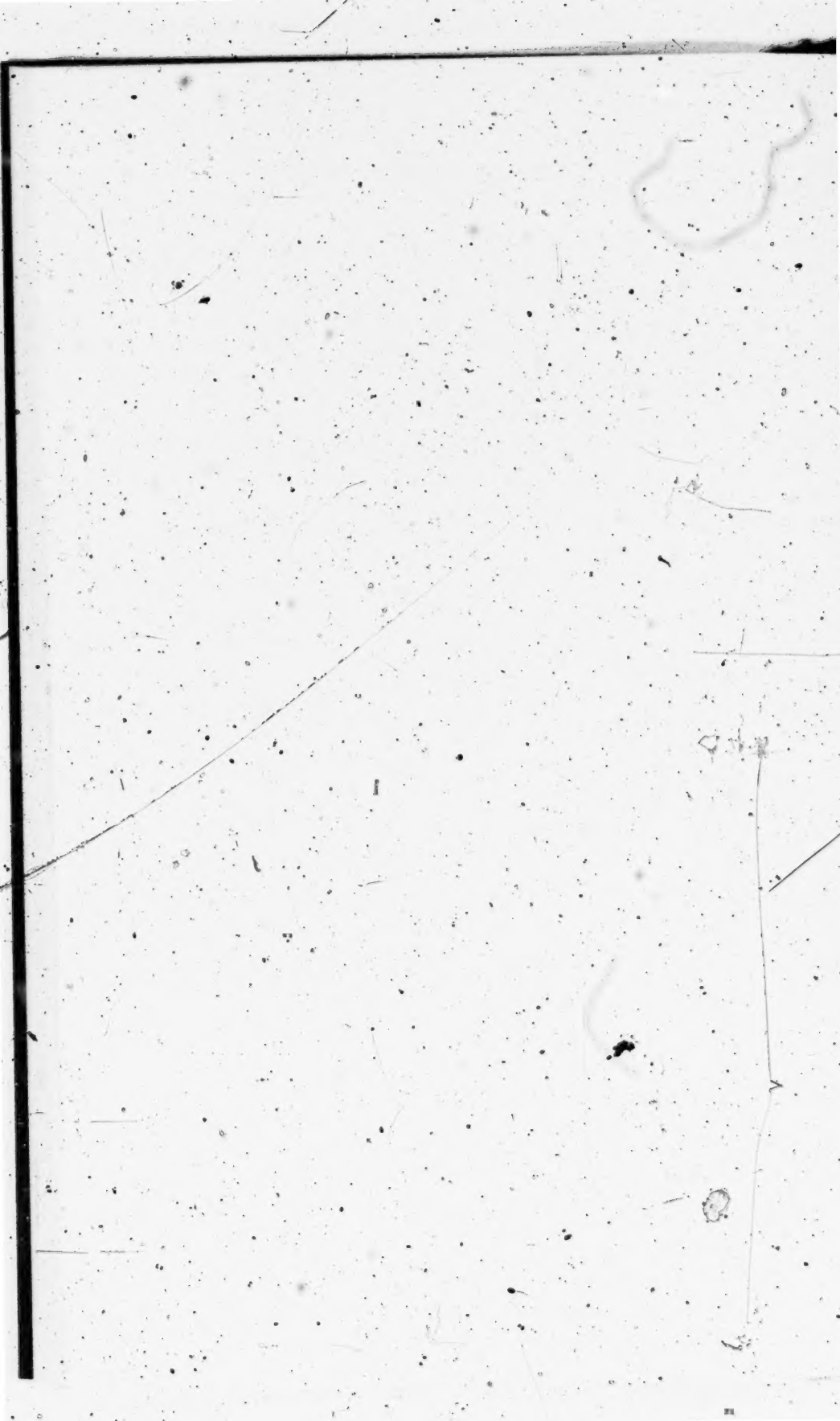
[fol. 63] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 64] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 5, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted, and the case is assigned for argument immediately following No. 855. The Solicitor General is invited to file a brief *amicus curiae* if he is so advised.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 811

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
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Washington 5, D. C.;
LESTER W. JENNINGS,
EDWIN C. COFFEE,
Law Exchange Building,
Jacksonville 2, Florida,
Counsel for Petitioners.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Justices of the Supreme Court of the United States:

The above named petitioners respectfully petition for a writ of certiorari to review a decision of the Supreme Court of Florida, rendered on November 28, 1944. (*Leo H. Hill, et al.* v. *State of Florida, et al.*) A copy of such decision is attached hereto as Appendix "A". Such decision affirmed a decree of the Circuit Court for Duval County, Florida.

Summary Statement of Matter Involved

This case was instituted by the filing of an action for injunction by the Attorney General of the State of Florida against Petitioner Leo H. Hill and Petitioner United As-

sociation of Journeymen Plumbers and Steamfitters of United States and Canada, Local 234 (hereinafter referred to as Local Union No. 234) (R. 1). Petitioner Hill is an officer of said Local Union and is also President of the Florida State Federation of Labor. The Petitioner Local Union No. 234 is a labor organization affiliated with the United Association of Journeymen Plumbers and Steamfitters of United States and Canada, A. F. of L., and operates in the City of Jacksonville, Florida (R. 1). The injunction sought to enjoin the Local Union from functioning as a labor organization and Leo H. Hill from acting as business agent or representative of said Local, unless and until they complied with the requirements of Chapter 21968, Laws of Florida, Acts of 1943 (hereinafter sometimes referred to by its popular name of H. B. 142). (R. 3). A copy of such Act is attached hereto as Appendix "B".

H. B. 142 is an Act "regulating the activities and affairs of labor unions, their officers, agents, members, organizers and other representatives." Under the Act unions and union representatives are licensed, and the activities of labor organizations, including their internal affairs, are regulated and circumscribed, as for instance, by the limiting of union initiation fees under Section 5, by the prescribing of methods of accounting under Section 7, and by placing restrictions on union elections, and upon picketing and striking under Section 9.

The injunction was premised upon and sought to enforce Sections 4 and 6 of the Act, and these are the only sections of the Act which are involved in this petition for certiorari. Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition of acting as a representative of any labor organization, and sets up a Board authorized to receive applications for and to issue such licenses. More specifically, a license must be obtained by a labor representa-

tive in order for him to act as a "business agent", which under Section 2(2) of the Act is defined as any person acting on behalf of any labor organization in "(a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 6 of the Act requires that labor organizations operating in the State file a statement containing the name of the organization, its location, and the names and addresses of its officials, and to pay an annual license fee as a condition of functioning in the State.

After the defendants had filed an answer (R. 4) admitting and denying certain allegations of the complaint and asserting that Sections 4 and 6 violated the State and Federal Constitutions in various respects as more particularly set forth under "Questions Presented" infra), the case was submitted to the Trial Court on a stipulation that the court would consider the case upon the pleadings (R. 16). Under the pleadings and stipulation the following minimum facts have been established: that the defendant, Local No. 234, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, is a labor organization or labor union within the commonly understood meaning of the term, consisting of a voluntary association of working people banded together for their mutual aid and protection, and is and has been functioning as such in the city of Jacksonville, State of Florida; that the defendant, Leo H. Hill, is a duly authorized and paid representative of said labor organization, acting on behalf of such labor organization and its members in the State of Florida, among other things, in the soliciting and procuring from employees membership or authorization cards in labor organizations in the process of organizing and soliciting and receiving from employers privileges and benefits

for employees in the process of collective bargaining; that such defendants had not complied with the requirements of Sections 4 and 6 of H. B. 142 (R. —).

The Trial Court issued a final decree on June 22, 1942 under which it found that Sections 4 and 6 were valid constitutional enactments and under which the Court enjoined the defendant, Leo H. Hill, "from acting as business agent for said labor organization until he shall thereafter duly procure said license," and the defendant, Local No. 234, "from functioning and operating as a labor organization or labor union, until it shall thereafter duly make such report and pay said fee" (R. 18).

The defendants thereupon filed assignments of error, (R. 19), in which the constitutional questions were again raised, and appealed the case to the Supreme Court of Florida. After hearing argument the Supreme Court of Florida on November 28, in a unanimous decision, sustained the decree of the Circuit Court and declared that Sections 4 and 6 of the Florida Act did not violate any provisions of the State or Federal Constitution (R. 26).

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237(b), 28 U. S. C. A., Section 344(b). This case is one in which the validity of Sections 4 and 6 of H. B. 142 is drawn into question upon the ground that such sections on their face and as construed in the opinion of the Supreme Court of Florida are repugnant to the Constitution of the United States in various respects as more particularly set forth under "Questions Presented" infra). The decision of the Florida Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the Courts of Florida when

the Supreme Court of that State on November 28, 1944 rendered a decision upholding the decree of the Trial Court. the Supreme Court of that State on November 28, 1944, The constitutional questions as set below were raised in every posible stage of the proceeding below. The answer to the complaint raised such questions; these federal questions were again raised in the Assignment of Errors on appeal to the State Supreme Court; such federal questions were briefed and argued before the State Supreme Court; and that Court passed upon these federal questions in its opinion. A case or controversy clearly exists between the parties to this litigation, the State having permanently enjoined one petitioner from functioning as business representative, and the other petitioner from functioning as a labor organization, until the petitioners have complied with the requirements of Sections 4 and 6.

Questions Presented

The following federal questions, all of which were raised and argued before and passed upon by the Florida Supreme Court, are involved in the present petition for certiorari and review.

I. Do Sections 4 and 6 and the injunction issued thereunder restrain or condition the exercise by petitioners of civil rights freely granted under the First Amendment to the United States Constitution?[1]

II. Do Section 4 and the injunction issued thereunder restrain or condition any rights granted Petitioner Hill by Congress under the National Labor Relations Act?

[1] The manner in which Section 6 deprives petitioners of civil rights is not discussed in this petition or brief. An applicable discussion of this issue appears in petition and brief in No. 558 (*Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, certiorari granted November 20, 1944.)

III. Do Sections 4 and 6 and H.B. 142 discriminate as between the class of labor associations and employer associations in general, and within the class of labor associations in particular by the exemption under Section 15 of associations of railway employees from the requirements of H.B. 142, thereby denying petitioners equal protection of the law?

IV. Is Section 2(2), containing the definition of "business agent", and upon which Section 4 is dependent for operation, so vague and indefinite as to fail to accord Petitioner Hill due process of law under the Fourteenth Amendment to the Federal Constitution?

All of these questions were answered by the Florida Supreme Court in favor of the validity of Sections 4 and 6, that Court, however, striking out that portion of Section 4 giving the issuing Board power to determine "whether public interest requires the issuance of the license."

Reasons Relied on for Allowance of Writ

Issues of the utmost importance to labor organizations, their members and their representatives throughout the country, are involved under this petition for review. The State of Florida has attempted to license, condition, and enjoin the right of individuals to act as representatives of labor organizations in the solicitation of members in the process of organization and the solicitation of privileges for members in the process of collective bargaining. The Supreme Court of Florida has expressly held that the activities of labor organizations, their members and their representatives, stand on exactly the same plane in respect to the right of the State to license and regulate, as do the activities of commercial enterprises and their representatives, and that the right of labor representatives to solicit for membership is no higher a right under the Federal Con-

stitution than the right of commercial representatives to solicit for sales. The Supreme Court of Florida, although asserting that the activities of Chambers of Commerce (including, presumably, the right of solicitation on their behalf) have as high a standing under the Constitution as do the activities of religious or political organizations, has denied petitioners' claim that the right of solicitation of representatives of labor organizations has such higher standing.

A decision by this Court of the issues presented under this decision will not only resolve similar issues which have arisen in other States which have enacted similar legislation, but will serve to define the allowable area of State control of labor organizations and their representatives and to determine whether the assemblage into and functioning in labor organizations by working people, and the solicitation by their representatives of members in the process of organizing, and of employee benefits in the process of collective bargaining, are rights protected as concomitant of the civil rights of assembly and speech, or are mere privileges which the State can withhold or regulate or condition as it sees fit.

As more fully set forth in the brief attached hereto, it is petitioners' principal contention that the determination of the court below that Section 4 and the injunction issued thereunder do not previously restrain or deny rights of assembly and speech is contrary to the holdings of this Court in such cases as *Fiske* v. *Kansas*, 274 U. S. 380; *Hague* v. *CIO*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; and *West Virginia* v. *Barnette*, 319 U. S. 624.

In addition, constitutional rights of a less fundamental, although no less important, status are asserted to have been denied by the legislation in question, and the determination of the court below in favor of the validity of the legislation to be in conflict with the rationale of many decisions of this

Court. Thus, the determination of the Florida Supreme Court that the legislation, by excepting unions of railroad employees from its requirements, is not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment, which determination is predicated on the irrelevant reason that such unions are covered by the Railway Labor Act, is in conflict with the decision of this Court in *Frost* v. *Corporation Commission*, 278 U. S. 515, and *Southern Railway* v. *Green*, 216 U. S. 400; the Florida Court's determination on the question of whether the legislation denies or withholds rights granted under the Wagner Act in violation of Article VI of the Federal Constitution is in conflict with the decision of this Court in *Hines* v. *Davidowitz*, 312 U. S. 52, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; and its determination on the question of whether Section 2 (2) defining the term "business agent" (required to obtain licenses under Section 4) is so ambiguous as to deny due process of law in violation of the Fourteenth Amendment is in conflict with the decisions of this Court in *Lanzetta* v. *New Jersey*, 306 U. S. 451, and *United States* v. *Reese*, 92 U. S. 214.

This case raises constitutional issues of a very substantial nature—issues which can be determined authoritatively only by this Court and which have not heretofore been precisely determined by this Court. Similar attempts to license representatives of labor organizations and to condition rights granted by Congress have been made in some six states in addition to Florida, and threatens to be passed in other states. An adjudication of the issues in this case by this Court is necessary in order to set at rest many of the difficult and perplexing constitutional questions that have arisen by reason of the various above described enact-

ments. An adjudication of the issues in this case is further necessary in order to resolve a conflict between the decisions of the highest courts of Colorado on the one hand and Florida and Alabama on the other hand in respect to the federal constitutional issues raised in this case, the Supreme Court of Colorado, on December 21, 1944, in *American Federation of Labor, et al.* v. *W. I. Reilly, et al.*, having decided such issues in favor of petitioners' contentions. The issues presented in this case are in substance the same as the issues presented to this Court in No. 14, October 1944 Term (*Thomas* v. *Collins*, certiorari granted December 31, 1944, argued May 1, 1944, further argued October 11, 1944) and in No. 558, October 1944 Term (*Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, certiorari granted November 20, 1944). It is respectfully requested that if certiorari is granted under this petition, this case be assigned for argument with Case No. 558, above, and that for such purpose argument in Case No. 558 be deferred to permit argument of the two cases in succession.

WHEREFORE, Your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Florida, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, entitled "Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local No. 234, Petitioners, vs. State of Florida, ex rel., J. Tom Watson, Attorney General," and that the judgment of the Supreme Court of Florida may be reviewed by this Honorable Court and that your petitioners may have such other and further

relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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Washington 5, D. C.;
LESTER W. JENNINGS,
EDWIN C. COFFEE,
Law Exchange Building,
Jacksonville 2, Florida,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No.

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,

Petitioners,

vs.

STATE OF FLORIDA, EX REL., J. TOM WATSON, ATTORNEY GENERAL

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinion of the Court Below

The opinion of the Florida Supreme Court was filed on November 28, 1944, and has not been yet officially reported. A copy of such opinion is attached hereto as Appendix "B".

Jurisdiction

The statement concerning jurisdiction is set forth in the petition and is incorporated herein by reference.

Statement of the Case

The statement of the case appears in the petition and is incorporated herein by reference. There is no dispute concerning the facts involved, and such facts as are relevant are set forth in such statement and in the arguments that follow.

Specification of Errors

The Supreme Court of Florida erred in the following respects:

1. In holding that Sections 4 and 6 of H. B. 142 and the injunction issued thereunder do not impose a previous general restraint on or constitute a denial of the exercise of civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

2. In holding that Sections 4 and 6, applicable only to non-railroad unions under the exemption from the Act under Section 15 of railroad unions, are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

3. In holding that Sections 4 and 6 do not deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

4. In holding that Section 2(2) of H. B. 142, defining persons required to take out licenses under Section 4, is not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Argument

I

Section 4 and the Injunction Issued Thereunder Impose a Previous General Restraint on and Prohibit the Exercise of Civil Rights of Assembly and Speech.

Section 4 of H. B. 142 attempts to license and regulate the right of petitioner Hill to act for and on behalf of labor organizations in the solicitation of members in the process of organizing, and in the solicitation of employee benefits in the process of collective bargaining. It is petitioner's contention that such section imposes a previous general restraint upon and impairs the exercise of his right to freedom of speech and assemblage.

The basis upon which the Florida Supreme Court held that Section 4 and the injunction issued thereunder do not deprive of constitutional rights is stated by that Court to be as follows:

> "Labor unions, like other trade, professional and business organizations are concerned with the business of making a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, * * * The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

It is to this concept of the right of working people to assemble into and function as labor organizations and of labor representatives to solicit membership and employee

benefits on behalf of labor organizations as being entitled to no higher constitutional protection than the right of individuals to engage in commercial enterprise for profit and to solicit sales on behalf of such enterprise that petitioners take exception. The rights of free speech and assemblage as guaranteed by the First Amendment have been placed by the United States Supreme Court on a different level than property rights protected under the Fourteenth Amendment, and regulations which may be within the police power of the State to make with respect to those engaged in business for a profit are not valid with respect to those who exercise civil rights where such regulations curtail and limit the exercise of such rights. *West Virginia* v. *Barnette*, 319 U. S. 624.

It is petitioners' contention that trade unions, organized as they are out of the very necessities of the situation and representing in tangible form all of the inner desires and aspirations that have animated every grade and class of labor since the first days of working-class history, are to be recognized as democratic institutions—bulwarks of a free society, whose functions are extensions and corollaries of the basic rights of assembly and speech as exercised by the individual members of the organization, and whose existence depends on no mere sufferance or good will of any government, but has the same high standing as has the right of persons to assemble into political organizations for political purposes, or into religious organizations for religious purposes, or into scientific organizations for scientific purposes. See *State* v. *Butterworth*, 104 N. J. L. 549, 142 A. 57, 58 A. L. R. 744; *Whitney* v. *California*, 274 U. S. 357; *Hague* v. *C. I. O.*, 307 U. S. 496; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon*, 299 U. S. 353. See also *A. F. L.* v. *Reilly*, decided by the Supreme Court of Colorado on December 21, 1944.

Under Section 4 and the injunction issued thereunder, petitioner Hill has been enjoined, without first obtaining the permission of the State by procuring a license, from seeking by word of mouth or by pamphlet or any other form of written communication (1) to persuade an employee to sign a membership card in Local #234 or to sign a authorization card permitting Local #234 to act as the collective bargaining representative of said employee, and (2) to persuade an employer, during the process of collective bargaining, to extend any privilege to, or recognize or grant any right in, any employee whom Hill might represent. The prohibition is an absolute one applicable although the solicitation be restrained and the cause just. The prohibition is not made contingent upon the solicitation of fees or other sums of money.

In order not only to form labor organizations, but to enable labor organizations to flourish and function after having been formed, workers have designated by democratic processes from among their own ranks spokesmen—spokesmen to speak on their behalf to other employees, urging such employees to join in the common organization, and to solicit employers for privileges and benefits for employees in the process of collective bargaining. Solicitation for membership and participation in labor organizaton is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Sections 7 and 9. As a practical matter, it is necessary to submit application or membership cards to the National Labor Relations Board as evidence that the organization filing a petition under Section 9 of the National Labor Relations Act has a representation interest sufficient for the Board to act. Thus, the freedom of the

individual worker to speak effectively through his organization in collective bargaining is, in a very real way, dependent upon his freedom to solicit his fellow workers for authorization cards indicating their willingness to join with him. The fact that Section 4 prohibits solicitation of fellow workers to join only when an authorization or membership card is solicited is not a limitation which permits appellants nevertheless to exercise the essence of the right to solicitation; on the contrary, in order for solicitation into labor organizations to be at all effectve, it is obviously necessary that the solicitor be enabled to accomplish the very object of this solicitation by obtaining membership applications or representaton authorizations. Without this, the general right of solicitation would indeed be an empty one.

Similarly, the right of workers to gather together into labor organizations would be an empty one were their spokesmen denied the right to solicit the employer for employee benefits; the entire process of collective bargaining would be broken down ware the right of petition for redress of grievances made subject to the license of the State.

The following cases indicate the status of solicitation by labor representatives as a concomitant of the exercise of the civil rights of speech and assembly:

In *Schneider* v. *New Jersey*, 308 U. S. 146, solicitation by a representative of a labor organization for public support through the distribution of handbills was upheld as a concomitant of the right to free speech. That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes was again specifically declared by the Supreme Court in *Martin* v. *City of Struthers*, 319 U. S. 141, 145-6.

In *Hague* v. *C. I. O., supra,* the problem involved the exercise of these same rights not merely by picketing and handbills but further by the holding of meetings and solicitation of members. The opinion of Mr. Justice, now Chief Justice, Stone stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.) Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

In *Fiske* v. *Kansas,* 274 U. S. 380, the Supreme Court directly held that the inducing or securing of persons to sign applications for membership in, or by issuing membership cards in, a certain "Workers' Industrial Union", a branch of the Industrial Workers of the World, was a right entitled to constitutional protection when peacefully engaged in. In that case the defendant had been convicted of "'knowingly and feloniously persuading, inducing and securing' certain persons 'to sign an application for membership in * * * and by issuing to' them 'membership cards' in a certain Workers' Industrial Union, 'a branch of and component part of the Industrial Workers of the World organization * * *'"; the case is an exact parallel to the instant case.

The case of *Herndon* v. *Lowry, supra,* specifically turned upon the right of individuals to solicit membership in political parties. That case held that the right of solicitation for membership in a political party was a concomitant

of the right of free speech. If the right to form, join and assist labor organizations for economic and social and political purposes stands on an equal level with the right to form, join and assist political organizations for political purposes, it can hardly be asserted that the right to solicit membership in labor organizations, which, as we have seen, must necessarily include the right to solicit membership or authorization cards therein, stands on a lesser plane than solicitation into political parties.

It might be argued that the constitutional protection of speech is not applicable in the present case because the statute is limited to solicitation by persons who receive "pecuniary or financial consideration" therefor. The receipt by petitioner of a pecuniary consideration in the form of a salary for his services no more operates to transmute his functions into a commercial category than does the payment of an income to a preacher or the payment of a salary to a newspaper editor. In *Murdock* v. *Pennsylvania, supra,* the Court stated:

> "Freedom of speech, freedom of the press, freedom of religion, are available to all, not merely to those who can pay their own way."

See also *Follett* v. *Town of McCormick,* 64 S. Ct. 717.

Similarly, the State of Florida can derive no constitutional support for its statute by characterizing appellant and other labor spokesmen as "business agents" and thereby seeking to place them under regulation as though their activities constituted business or commercial transactions. As the Supreme Court said in *Near* v. *Minnesota,* 283 U. S. 697:

> "Characterizing the publication as a business and the business as a nuisance does not permit an invasion of the constitutional immunity against restraint."

All that has heretofore been stated is, it is submitted, sufficient to indicate the fallacy of the State Court's assumption that the act of solicitation of members of labor organizations stands on the same footing and is to be gauged by the same standards, for the purpose of licensing and regulating, as does the act of solicitation of sales by commercial representatives. The organizations and associations into which millions of American working men and women have gathered for mutual and community improvement, for advancement of the welfare of all working men and women, politically, socially and economically, and the solicitation of membership therein, are obviously in no way analogous to commercial activities and commercial solicitation. As this Court stated in *Murdock* v. *Pennsylvania, supra:*

> "The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills."

Since petitioner Hill's right to solicit in the manner enjoined under Section 4 is a right finding protection under the First Amendment as a concomitant of the exercise of speech and assembly, such right cannot be licensed or its exercise unduly burdened even when there is rational basis for so doing under the state police power. See *Lovell* v. *City of Griffin*, 303 U. S. 44; *Schneider* v. *New Jersey, supra; Murdock* v. *Pennsylvania, supra.* As stated recently by the United States Supreme Court in *West Virginia* v. *Barnette, supra:*

> "In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and

those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave immediate danger to interests which the State may lawfully protect."

It is no defense to the statute to claim that the State will not deny the license on request. The assertion of the power to grant a license implies the assertion of the power to withhold it. If the State may insist that the rights of free speech, press and assembly can be exercised only on certain terms which go beyond the limits of the constitutional protection, it may insist on prohibiting the enjoyment of those rights altogether. The degree of burden is not the determining factor; it is the power which is asserted that is non-existent. *Grosjean* v. *American Press Company*, 297 U. S. 233. Even if the license might be secured for the asking, this would constitute no answer. *Thornhill* v. *Alabama*, 310 U. S. 88.

In any event, the license under Section 4 is not forthcoming upon request, and a great deal of discretion is reposed in the State on the issuance of such license. Such discretion has not been eliminated by the removal by the Florida Supreme Court of that portion of Section 4 stating that the license is conditioned, among other things, on the issuing board being "of the opinion that the public interest re-

quires that a license or permit should be issued to such applicant." Section 4 still provides for the suspension or revocation of licenses which presumably must be done in the discretion or good judgment of the Board having power to issue the licenses, and the section still provides for the filing of objections prior to the issuance of any license which, presumably, the Board would have jurisdiction and authority to pass upon. Finally, there is still a discretion lodged in a majority of the Board to find the applicant qualified pursuant to the terms of the Act, that is, to find that he has "good moral character" and has been a resident of the United States for a period of at least ten years prior to making application for a license, and under Section 10 the Attorney General is authorized to institute proceedings for the revocation or suspension of license. See *Schneider* v. *State, supra.*

In any event, the exercise of civil rights is unduly impaired and burdened by the provisions in Section 4 for the holding of applications for permits on file for a period of thirty days, between which time any persons may make objections to the issuing of such permit, and for the provisions for further hearings upon such objections if made. The delay thus caused, even if no objections are filed, would entirely defeat the organizational process which, of necessity, requires that the right of solicitation be exercised freely and at any time when the necessity for the same arises.

In this discussion concerning the unconstitutionality of Section 4, there is not involved any contention or suggestion that representatives of labor organizations are "above the law" or beyond regulation. In so far as free speech and press and assembly are concerned, the cases make clear the extent to which that regulation may go. In so far as a union or its representatives engage in any activity which can properly be considered criminal, they are today subject

to the provisions of the criminal law. It is this consideration which constitutes one of the cornerstones of American traditions of free speech. Laws may be passed to curb specific criminal conduct but not to curb the very exercise of the right of speech or assembly. See *DeJonge* v. *Oregon, supra*, and *Thornhill* v. *Alabama, supra.*

II

Sections 4 and 6 Deny Petitioners Equal Protection of the Laws.

In making classifications and imposing limitations upon particular groups, the State must act on the basis of a reasonable relationship to the object sought and not on the basis of any arbitrary and unreasonable classification, and all within a class must be treated equally. *Frost* v. *Corporation Commission*, 278 U. S. 515; *Southern Railway* v. *Green*, 216 U. S. 400.

Under H. B. 142 labor associations and their agents are licensed and subjected to regulation while employer associations and their agents, which associations are set up and established and function for the same purpose of representation on behalf of employers as labor organizations function on behalf of employees, are not licensed and regulated. Labor organizations on the one hand and employer associations on the other are parties to an economic struggle for a fair share of the joint product of capital and labor; these parties are in continuous relationship of either opposition or conciliation in the same field of industrial relationships. Why should not both parties to this economic struggle be treated alike?

Even more strikingly discriminatory is the fact that Sections 4 and 6 of the Act apply only to unions of non-railroad employees by virtue of the fact that Section 15 of the Act exempts associations of railway employees from

the Act "as long as they are regulated by any act or acts of the Congress of the United States." Thus, none of the four national independent Railroad Brotherhoods nor any of the nine national railroad labor unions which are affiliated with the American Federation of Labor nor any of the eleven A. F. of L. craft unions in the railroad shops having membership among railroad employees, nor the agents or representatives of any of these organizations, are required to be licensed and regulated by H. B. 142.

This exclusion is manifestly contrary to the principle that all within the class against which any particular legislation is directed—in this case labor organizations—must be treated alike. Under the present Act, one local of an international organization affiliated with the American Federation of Labor may not be required to be licensed or have its agents or have its internal affairs regulated where the members of that local organization are employed by railroads, while another local of that same international organization, operating under identical by-laws, will be required so to do where the members of that local or organization are not employed by railroads but by contractors, builders or manufacturers. An even more anomalous situation is created where, as in the case of the International Association of Machinists, the International Brotherhood of Boilermakers and many other craft unions, a number of their locals are mixed locals, that is, half or more of the members of the locals are employed by railroads, whereas the remaining half are employed by private contractors or builders. That half employed by railroads will be exempt; yet both halves operate under the same rules and often have one set of officers. In addition, even in the case of separate locals of railroad and non-railroad employees, the members are ordinarily organized and employees solicited for membership by a single representative acting on behalf of both.

The Florida Supreme Court, relying upon the language of the exemption and upon a decision of the Alabama Supreme Court in *Alabama State Federation of Labor, et al.* v. *Robert E. McAdory, et al.*, 18 Southern (2) 810, attempted to support the exclusion of unions of railroad employees on the theory that such organizations come under the Railway Labor Act. While this fact may constitute a difference between railroad unions and all other classes of unions, nevertheless this difference has absolutely no relevance to the purposes of the legislation for which the classification is proposed. Amenability of particular unions to the Railway Labor Act is no answer to the classification for the purposes of H. B. 142, for the reason that the field of employer-employee relationships regulated under the Railway Labor Act is not the same field at all that is regulated under the Florida Act; on the contrary, the Florida Act deals with a field which is in no way touched upon by the Railway Labor Act. The Supreme Court, quoting long-established authority, said in *Frost* v. *Corporation Commission*, 278 U. S. 515, at 522-523:

> "* * * Mere difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without any such basis', * * *"

The Railway Labor Act does not attempt or purport to regulate the internal operations of railway labor organizations that may be subject to the Act; the Act merely imposes certain restrictions upon employer activity, provides for the establishment of collective bargaining units, and fosters collective bargaining relationships. The Florida Act deals with an entirely different subject matter. For instance, the Florida Act (Section 4) licenses and pre-

scribes qualifications for labor representatives, and the Railway Labor Act does not; the Florida Act (Section 5) limits union initiation fees, and the Railway Labor Act does not; the Florida Act (Section 6) licenses unions by requiring the filing of statements and taxes their right to function, and the Railway Labor Act does not; the Florida Act (Section 7) prescribes methods of internal accounting, and the Railway Labor Act does not; the Florida Act (Section 9) regulates internal rights of members, election to office, the charging and collection of dues and assessments, and other internal matters, and the Railway Labor Act does not; and the Florida Act (Section 11) prescribes procedures and process in suits by and against labor organizations, and the Railway Labor Act does not.

The State does not attempt to assert that there is any difference in the internal operations of labor organizations whose members are employed by railroads and labor organizations whose members are employed by other types of employers. On the contrary, the internal operations of all organizations affiliated with the State Federation of Labor, whether organizations of railroad employees or not, are substantially similar, if not identical. As a matter of fact, as previously mentioned, many local organizations of railroad employees in the State are affiliated with the same national or international union, such as the Boilermakers' and Plumbers' Unions, as are organizations of non-railroad employees which are subject to the Act, so that their respective operations would have to be identical and an absolute identity is achieved in the case of those local unions operating in the State, half of whose members are railway employees and half of whose members are non-railway employees, and where they are represented by the same business agents.

A business agent for the United Association of Journeymen Plumbers may, without obtaining a license, solicit

application and membership cards in a Plumbers' local of railroad employees, but that same agent, when making identical solicitations for membership in a local Plumbers' union of manufacturing or non-railroad metal trades employees, may not do so unless he has procured a license under Section 4. A business agent of a local of the Plumbers' Union may solicit for employee benefits in the process of collective bargaining with railroad shops, but may not do so if he is soliciting for benefits for employees engaged in the plumbing trade in a shipyard. It is respectfully submitted that this is discrimination in the highest degree and clearly denies petitioners equal protection under law.

The Act cannot be saved by striking Section 15 under the saving clause (Sec. 16). To eliminate Section 15 would be to extend the scope of the law to embrace labor organizations which the Legislature, in passing the statute, had by its very terms expressly excluded, and thus to disregard the rule that, where the excepting proviso is found unconstitutional, the substantive provisions which it qualify cannot stand. See *Connally* v. *Union Sewer Pipe Co.*, 184 U. S. 450, (reversed on other grounds); *Frost* v. *Corporation Commission, supra; Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Smith* v. *Cahoon*, 283 U. S. 553; and *Hickey* v. *Levitan*, 190 Wis. 646, 48 A. L. R. 434.

III

Section 4 Deprives of Rights Granted and Protected Under the National Labor Relations Act In Violation of Article VI of the United States Constitution.

Section 4 operates to impose restraints or conditions upon the exercise of rights unconditionally granted by the National Labor Relations Act, and it interferes with the exercise of rights freely bestowed under such Act; as such

it must be declared illegal as being in conflict with federal legislation in a field in which Congress has paramount authority. Section 4 licenses the right of individual employees to solicit membership or authorization cards in the process of organization or to solicit for employes benefits or rights in the process of collective bargaining. These are rights specifically granted under the National Labor Relations Act, pursuant to a valid Congressional purpose of minimizing labor disturbances that might interfere with interstate commerce. As such, these rights must necessarily be exercised free from any restraint by the State; otherwise the broad federal objective might be forestalled or nullified by state legislation.

In order to effectuate its policy of freeing interstate commerce from the burdens of industrial strife and unrest, Congress found it necessary to confer upon employees the following unqualified rights:

> "Sec. 7. Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 9 of the National Labor Relations Act permits labor organizations or individuals to petition the National Labor Relations Board for certification of a particular labor organization as the exclusive collective bargaining representative of all the employees in an appropriate bargaining unit. As a matter of fact, Section 9 cannot be invoked without submitting to the Regional Director of any particular region authorization or membership cards as evidence in support of the petitioning union's claim that it represents sufficiently substantial number of employees to warrant the Board's ordering a hearing and calling an

election. The National Labor Relations Board has repeatedly recognized that the right to self-organization includes the right of employees, through organizers, to solicit membership in labor organizations, and the Act clearly contemplates that the services of organizers will be availed of by employees under modern industrial conditions. Section 4 not only imposes a license upon the the right of solicitation of membership and upon the right of soliciting benefits in the process of collective bargaining, but operates to unduly burden and encumber such right by reason of the delays incident to the obtaining of a license and by the reason of possible disclosure to employers of the names of organizers in specific organizational campaigns where secrecy might be necessary. (See brief of United States as amicus curiae in *Thomas* v. *Collins*, No. 14, October Term, 1944.)

That the requirements of Section 4 do in practical effect prevent engaging in activities and pursuing rights established under the National Labor Relations Act is no mere supposition; in the *Matter of Eppinger & Russell Company*, 56 N. L. R. B. No. 226, the National Labor Relations Board had before it a case in which a Florida employer had refused to bargain with a Florida union through a Florida business agent for the reason that such business agent had not obtained a license to act as the Union's representative under Section 4. The Board, in a unanimous decision, held that the employer in so refusing had violated the provisions of the National Labor Relations Act by denying rights established thereunder, and that the provisions of the Florida law relied upon by the employer to excuse his breach of the National Labor Relations Act "must yield before the paramount authority of Congress expressed in a valid and applicable federal law."

The applicable law is clear. When Congress passes legislation in the effectuation of powers conferred upon it by the

Constitution and in a field in which it has plenary power to assert the right to legislate, all state enactments inconsistent with the federal legislative plan are superseded, and any state legislation which conflicts with the federal legislation must fall. The appplication of this principle is not concerned with the nature of the power asserted by the State; although state regulation must be founded upon a valid exercise of its police power or upon other powers which are usually beyond challenge, nevertheless, when such regulation conflicts with federal regulation, the federal regulation must prevail. Const. Art. VI, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. (U. S.) 1; *Cooley* v. *Board of Wardens*, 12 How. (U. S.) 299; *Hines* v. *Davidowitz*, 313 U. S. 52; *McGoldrick* v. *Gulf Oil Corp.*, 309 U. S. 414. See also *National Labor Relations Board* v. *Hearst Publications, Inc.*, 64 Sup. Ct. 851, at 856, and *Allen-Bradley* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

IV

SECTION 2(2), UPON WHICH SECTION 4 IS DEPENDENT FOR OPERATION, IS SO AMBIGUOUS AS TO DENY DUE PROCESS OF LAW.

"Business agents" who fail to procure licenses under Section 4 are subjected to fine and imprisonment. While the State may create crimes, it is incumbent upon it in so doing to be sufficiently explicit so as to inform the public what conduct on the individual's part will render him liable to criminal penalties. A statute, and particularly a criminal statute, which is so vague, indefinite and uncertain as to its meaning that the things and matters prohibited and its application to particular persons are not reasonably ascertainable, is void under the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Reese*, 92 U. S.

214, 23 L. Ed. 563; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, 85 L. Ed. 516.

Section 2(2) defines the term "business agent", and accordingly determines the application of Section 4 which requires the obtaining of licenses by "business agents."

Section 2(2) reads as follows:

> "The term 'business agent' as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

It is submitted that under this definition it is impossible to ascertain with any degree of certainty or definiteness just what classes of persons connected with labor organizations are or are not obliged to obtain licenses under Section 4, or under what conditions they are obliged to obtain such licenses.

What is meant by the term "pecuniary or financial consideration?" Is a worker who, as often happens in the closing days of an organizing campaign or campaign for the election of a bargaining representative, takes time off from his job for a day or two and is reimbursed by the union for his loss of time a "business agent" under this definition when during the day or two that he might be absent from work he procures application cards? Is an attorney who is paid a fee by a labor organization, and who writes a letter to an employer in regard to a grievance on behalf of the union, a "business agent"? Is the receipt of wage increases through the process of collective bargaining the receipt of a "pecuniary or financial consideration" which would require any person receiving any

such increase to obtain a license before soliciting or receiving from any employer any right or privilege for employees?

Further, what is meant by the term "work permits"? No definition of the term is attempted in the Act, and it is submitted that the term has not achieved such a meaning in common parlance as to indicate clearly and unequivocally to the average citizen just what is intended.

Finally, the remaining language of subsection (a) is completely ambiguous. What constitutes an "evidence of rights granted or claimed in, or by, a labor organization"? Certainly, a contract or any other legal document drawn up by an attorney for a labor organization for a fee would seem to come under this clause, and accordingly attorneys can henceforth act for labor organizations, draw up bills of sale, contracts, deeds, or any other written documents, only at the peril of being criminally prosecuted for a violation of H. B. 142 if they have not applied for and received licenses as business agents. A right granted, or claimed, in or by a labor organization may be any one of a thousand things; the term is so indefinite as to make impossible even citing a hypothetical example of what might be attempted.

Subsection (b) is equally ambiguous. What is meant by "receiving from an employer any right or privilege for employees"? A "right" or "privilege" in respect to what? And what particular type of a "right" or "privilege" out of the thousands known finding a status as such under the common law? How is it possible for an educated layman or even an attorney, let alone a union member who may not have had the opportunity to get through high school, to determine just what is intended by this clause?

It is respectfully submitted that petitioner is not required to speculate at his peril concerning the meaning of these very ambiguous subsections.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, it is clear that petitioners have been denied and deprived of rights granted and secured under the Constitution of the United States, and that the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1944

EN BANC

DUVAL COUNTY

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234, *Appellants,*

vs.

STATE OF FLORIDA, ex rel., J. TOM WATSON, Attorney General, *Appellee*

Opinion filed November 28, 1944.

An appeal from the Circuit Court for Duval County, Miles W. Lewis, Judge Jennings & Coffee, Joseph A. Padway (Washington, D. C.) and Herbert S. Thatcher (Washington, D. C.), for Appellants.

J. Tom Watson, Attorney General; Howard S. Bailey and R. W. Ervin, Jr., Assistant Attorneys General, for Appellee.

TERRELL, *J.:*

The Legislature of 1943 enacted Chapter 21968, Sections Four and Six of which are as follows:

> "Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an

application under oath therefor with the Secretary of State, accompanied by a fee of one Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on "file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act (*and are of the opinion that the public interest requires that a license or permit should be issued to such applicant*), then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the Secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;
(2) The location of its office;
(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report is shall be the duty of every such labor organization to pay the Secretary

of State an annual fee therefor in the sum of One Dollar."

Appellants declined to comply with the provisions of the act as thus quoted, contending that it was invalid. This suit was brought by the Attorney General to restrain Local 234 from functioning as a labor organization and Leo H. Hill from acting as its business agent pending compliance with the law. A motion to dismiss the bill was overruled. An answer interposed various defenses predicated on the State and Federal Constitutions. On final hearing, Section Six was upheld as valid in toto. As to Section Four, the Court deleted the words "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant", and upheld it in all other respects. This appeal is from the decree so entered.

It appears that the trial court deleted the provision from Section Four because it vested arbitrary power in the Board and was in conflict with the standard of qualification prescribed for one applying for a license to be a business agent of a labor union rendering it unconstitutional. We approve this holding.

It is first contended that Sections Four and Six as quoted and deleted are void because they restrain the exercise of appellants' civil rights guaranteed by the First Amendment to the Federal Constitution.

In essence, Section Four of Chapter 21968 hereafter referred to as House Bill 142, creates a State Licensing Board composed of the Governor, Secretary of State, and the State Superintendent of Public Instruction. All business agents for labor organizations must secure a permit from the State Licensing Board and as a prerequisite for securing such permit they must furnish proof that they have been (A) a citizen of the United States for more than ten years next preceding their application for the permit, (B) have not been convicted of a felony, (C) must be of good moral character and Section Six requires them to accompany the application with a fee of One Dollar.

Similar regulations are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, nurses,

beauty parlor operators, civil engineers, architects, liquor dealers, and many others engaged in gainful occupations. All such requirements have been upheld in the interest of the public health, morals, safety, welfare, and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford.

Such regulations have been imposed under the police power of the State and have been generally upheld for reasons so academic that it would harly seem necessary to cite authority to support them. Appellant's answer to this is that they are like religious associations, law and order leagues, citizens committees and chambers of commerce, and should, like these, be exempt from such regulations. Our attention is directed to no similarity between labor unions and the last named institutions and as we shall later show, there is no basis to grant them the same exemption.

Appellants contend that these regulations unduly restrict their freedom of speech, free press, and free assembly. This contention overlooks the fact that none of these guaranties are absolutes but are subject to reasonable police regulation in the interest of the public. It would be difficult to name an organization that more vitally affects the public or one in which the public is more vitally interested than the organizations of labor. Their activities and their public relations of late years have frequently pushed the war and every other human relation off the front page. To hold that their agents may not be regulated in the manner prescribed here would amount to a reversal of our holding with reference to every other kindred relation. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893; Riley vs. Sweat, 110 Fla. 362, 149 So. 48; Page vs. State Board of Medical Examiners, 141 Fla. 294, 193 So. 82; State ex rel Munch vs. Davis, 143 Fla. 236, 196 So. 491; State Board of Funeral Directors vs. Cooksey, 147 Fla. 337, 3 So. (2nd) 502.

Appellants also contend that Sections Four and Six of House Bill 142 unduly restrict their right to assemble as

working men, to solicit membership in labor organizations and that the fee charged is an undue restraint on these and other civil rights. They rely on Murdock vs. Pennsylvania, 319 U. S. 105, 63 Sup. Ct. 870, 87 L. Ed. 1292, and that line of cases to uphold this contention.

The gist of this contention is that they are no different from religious, fraternal, and charitable organizations and should enjoy the same immunity from license or other restraints. The answer to this contention is that religious, fraternal, and charitable organizations are in terms immunized from license taxes and other regulations on the theory that they minister to the spiritual, moral, educational and other necessities of the community. They are very largely gratuitous, are not imbued with the profit aspect and there is every reason why they should be so immunized while none of the reasons that immunize them have been shown to be attached to labor organizations.

The Federal Supreme Court has repeatedly upheld acts regulating different phases of employer and labor relations in the interest of the common good. National Labor Relations Board vs. Electric Vacuum Cleaner Co., 120 Fed. (2nd) 611, reversed on other grounds in 315 U. S. 685, 62 Sup. Ct. 846, 86 L. Ed. 1120; American Steel Foundries vs. Tri-City Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189. In the briefs of counsel for the State, our attention is directed to acts by at least eleven other states, Alabama, Kansas, Arkansas, Wisconsin, South Dakota, Idaho, Texas, Michigan, Pennsylvania, Massachusetts, and Minnesota regulating some phase of labor relations. Some of these acts are very similar to the one in question but others are different in some respects. The case of Ex parte Thomas, 141 Tex. 591, 174 S. W. (2nd) 958, is illuminating on the point because in most features, the Texas act is similar to ours and it upholds the power of the State to regulate labor unions under its police power. Casual review of the cases cited would seem to settle the controversy beyond question.

The requirement of Section Six to file annual reports giving (1) the name of the labor organization, (2) the location of its office, and (3) the name and address of its

president, secretary, treasurer, and business agent is supported by similar requirements in acts of Kansas, Texas, Wisconsin, Idaho, South Dakota, and Alabama. The Alabama Act was upheld by the Alabama Supreme Court in State Federation of Labor vs. Robert E. McAdory, — Ala. —, 18 So. (2d) 810. The opinion treats in a very illuminating manner this and other phases of labor union regulation.

The charge that House Bill 142 is new legislation hardly merits consideration. In a democracy like ours, regulatory legislation never precedes but always follows a felt necessity or demand for it. No social system could long endure that does not remain responsive to the need for change and flexible enough to modify its legislative patterns to compass the changes. Every form of social organization must be constantly amended to meet new techniques and changing circumstances. Call it progress or liberalism as you will, the instant we lose the incentive, we become static and ultimately perish.

As to the charge of One Dollar for a business agent's license, appellants contend that this is in reality a tax which amounts to a restraint on their civil rights, that is to say the right of workers to assemble for mutual aid and protection, to circulate and disseminate information, to form and join unions and to solicit others to join them.

We see no merit to this contention. The fee of One Dollar is nothing more than a charge to defray the cost of the service. Neither section Four or Six in any way affects the right of workmen to assemble for mutual aid, to circulate information or to organize and invite others to join them. These are all rights this Court has repeatedly recognized. Paramount Enterprises, Inc. vs. Mitchell, 104 Fla. 407, 140 So. 328.

We have reviewed all the cases cited by appellants in support of their contention as to civil rights but their main reliance appears to be on Thornhill vs. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093; Schneider vs. Irvington, 308 U. S. 147, 60 Sup. Ct. 146, 84 L. Ed. 155; Lovell vs. Griffin, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949; Hague v. C. I. O. 307 U. S. 496, 59 Sup. Ct. 954,

83 L. Ed. 1423; Cantwell vs. Connecticut, 310 U. S. 296, 60 Sup. Ct. 900 84 L. Ed. 1213; Near vs. Minnesota, ex rel Olson, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. Ed. 1357; Am. F. of L. vs. Swing, 312 U. S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855, and like cases. These cases have all been reviewed in connection with the case at bar as well as in former decisions of this Court and we think are directed to statutes or ordinances prohibiting the distribution of literature without a special permit depending on the arbitrary discretion of the mayor or some other officer. For this or some similar reason, they are not in point with the case at bar.

It is quite true that in Thornhill vs. Alabama, first cited in the preceding paragraph, the Court brought "picketing" within the protection of the Bill of Rights but so far as we have been able to find, organizing labor unions, collective bargaining, boycotting, striking, and other labor practices have been so immunized. It may be that conditions will arise in the future in which other labor practices should be so protected but such a case must await the appropriate conditions. With the facts before us, it certainly would be a tortured construction of the Bill of Rights to hold that other lines of endeavor are subject to police regulation but that labor unions are free from any species of regulation.

Individual freedoms guaranteed by the Constitution did not become such by chance. They were designed as a buffer to personal worth; they have no relation to institutions but they raised man to his full statute, put sand in his "guts" and raised him to a level with kings. Freedom of speech, for example, was first employed to guarantee members of parliament that they would not be called on the carpet by the king for any discussion they participated in on the floor of the house regarding public affairs. The right was later extended to the citizen as to all political discussion and when our Constitution was adopted, it was first included as one of the fundamental rights available to every citizen.

Labor unions, like other trade, professional and business organizations are concerned with the business of making

a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, but can it be reasonably contended that Sections Four and Six of House Bill 142 impose any unreasonable burden on them? Section Four requires nothing more than a showing of the Americanism, good moral character, and freedom from felony of their business agents and Section Six requires them to furnish the Secretary of State their name, place of business, and the name and address of the president, secretary, treasurer, and business agent. Literally thousands of persons and institutions over the country are required by State and Federal Governments to furnish similar information and many of them much more. In fact, the requirement of Section Six goes only to information that is common knowledge in the community where the labor union is located and most of it goes to the public on the communications it sends out.

We have long since gotten away from the idea that human relations which affect the public welfare can be transacted in a moral vacuum. Good moral character and sound Americanism is the very basis on which democratic institutions rest. It permeates every aspect of human relations from the White House down to the most juvenile community enterprise. A boy cannot get into a marble game if he does not play the game in recognition of the moral that his companions have rights that he must respect and the same moral thread runs through business relations, labor relations, and oll other relations that affect the public. Democratic institutions would go to pot quicker than it would take to tell how except for the moral standard on which they are pitched. It is past understanding that any one who plies his trade, business, or profession for a living should seriously contend that he is footloose in a moral universe with carte blanche to do as he pleases when others in like situation are bound by every restriction the Bill of Rights will permit. In this state of the law, it would seem idle to say that one's civil rights were unduly hobbled to require him to show his good moral

character that he had been exposed to the American way of life for ten years, that he had not committed a felony, where he is conducting his business, and who is conducting it for him.

The sole test for the exercise of the police power is reasonableness. True, the Legislature cannot under the guise of the police power arbitrarily invade personal or property rights or interfere with private business but if the statute has some rational relation to the safety, health, morals, or general welfare and the means employed may be reasonably said to accomplish the desired purpose, it is within the scope of the police power. The means adopted by the act must be reasonably necessary. They must be reasonable in their effect on the person, must not be oppressive and must not be designed for the annoyance of any particular person or class.

It is next contended that Sections Four and Six of House Bill 142 invade the field covered by the National Labor Relations Act and consequently it is non enforceable.

This contention proceeds on the presumption that the National Labor Relations Act preempts the field of labor regulation and removes any power on the part of the states to do so. If appellants' contentions were true, the National Labor Relations Act rather than the Act in question would go down under the Constitution. National Labor Relations Board vs. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 Sup. Ct. 615, 81 L. Ed. 893; Wisconsin Labor Relations Board vs. Fred Rueping Leather Co., 228 Wis. 473, 279 N. W. 673. In both these cases it was held that the power of Congress to regulate labor relations rested on the commerce clause while the power of the State rested on the police power and that the State power was supreme when no undue burden was laid on interstate commerce. Unless interstate commerce is obstructed, the Federal Act may not be called into operation.

It is next contended that House Bill 142 is invalid for discrimination in that Section 15 exempts associations of Railway Employees from its provisions contrary to the equal protection clause of the Fourteenth Amendment.

On this point, it is sufficient to say that all the state acts herein referred to make similar exemptions and none of them that have been assaulted for this reason have been stricken down. In fact, it seems to be a classification common to acts of this kind and one the Legislature was empowered to make. Alabama State Federation of Labor vs. McAdory, — Ala. —, 18 So. (2nd) 810; A. F. of L. vs. Reilly, 7 Labor Cases, 65, 168.

In our treatment of House Bill 142, we have observed the line followed by counsel in their briefs. In other words, Sections Four and Six have generally been treated together. It is true that their provisions overlap but in the main, Section Four applies to the business agent and Section Six applies to the Union or organization. A better practice would have been to recognize this distinction in the opinion but it would have resulted in much duplication and a more tedious discussion. The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public. The purpose of the regulation is not punic but to preserve the democratic process and bring to the knowledge of the individual or group regulated that it has an obligation to the public that rises above its personal or group interest.

Other questions argued have been considered but we find no reversible error.

Affirmed.

Buford, C. J., Brown, Chapman, Thomas, Adams and Sebring, J. J. concur.

APPENDIX B

Chapter 21968—(No. 334)

House Bill No. 142

AN ACT to Regulate the Activities and Affairs of Labor Unions, Their Officers, Agents, Members, Organizers, and Other Representatives; Making Provision for Suits

and Process By and Against the Same; Requiring Certain Fees; Declaring Certain Public Policy of the State; Giving Certain Definitions and Recognizing Certain Rights as Belonging to Employees; Exempting Certain Labor Organizations from its Provisions; Providing Certain Penalties and Punishment for Violations; With a Saving Clause in Case of Unconstitutionality; and Repealing All Laws and Parts of Laws in Conflict Herewith.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Because of the activities of labor unions affecting the economic conditions of the county and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof having within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization,

or (b) in soliciting or receiving from any employer any right or privilege for employees.

Section 3. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act and are of the opinion that the public interest requires that a license or permit should be issued to such applicant, then the Board shall be resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall ex-

pire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

Section 5. Labor unions or labor organizations shall not charge an initiation fee in excess of the sum of Fifteen Dollars ($15.00), provided that initiation fees in effect on January 1st, 1940 may be continued.

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;
(2) The location of its office;
(3) The name and address of the president, Secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

Section 7. It shall be the duty of any and all labor organizations in this State to keep accurate books of accounts itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor organization shall be entitled at all reasonable times to inspect the books, records and accounts of such labor organization.

Section 8. Any employee who is a member of any labor organization, who because of services with the armed forces of the United States, during time of war or national emergency, has been unable to pay any dues, assessments, or sums levied by any labor organization, shall not hereafter be required to make such back payments as a condition to reinstatement in good standing as a member of any labor organization to which he belonged.

Section 9. It shall be unlawful for any person:

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of an employee to make complaint, file charges, give information or testimony concerning the violations of this Act, or the petitioning to his union regarding any grievance he may have concerning his membership or employment, or the making known facts concerning such grievance or violations of law to any public officials, and his right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) To participate in any strike, walk-out, or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby; Provided, that this shall not prohibit any person from terminating his employment of his own volition.

(4) To conduct any election referred to in subsection 3 of this section without a secret ballot.

(5) To charge, receive, or retain any dues, assessments or other charges in excess of, or not authorized by, the constitution or by-laws of any labor organization.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

(7) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(8) To make any false statement in an application for a license.

(9) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(10) To cause any cessation of work or interference with the progress of work, by reason of any jurisdictional dis-

pute, grievance or disagreement between or within labor organizations.

(11) To coerce or intimidate any employee in the enjoyment of his legal rights, including those guaranteed in Section 3 of this Act, or to intimidate his family, picket his domicile or injure the person or property of such employee or his family.

(12) To picket beyond the area of the industry within which a labor dispute arises.

(13) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a reasonable and peaceable manner.

Section 10. An action may be commenced by the Attorney General of the State on complaint of any interested party, for the suspension or revocation of the license of any business agent for the violation of any of the provisions of this Act. Said action shall be commenced only in the circuit court of the county of residence of such business agent or of the county in which such violations occurred. Such action shall be heard by the court without a jury and the rules of equity procedure shall apply in such proceedings. The court may suspend such license for such time as in its judgment is deemed best, or may revoke such license.

Section 11. Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this State. All process, pleadings, and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only of such labor organization.

Section 12. All fees collected by the Secretary of State hereunder shall be paid to the State Treasurer and credited to the general fund.

Section 13. Except as specifically provided in this Act, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this Act be so construed as to invade unlawfully the right to freedom of speech.

Section 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

Section 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 17. This Act shall take effect immediately upon its becoming law.

Approved by the Governor June 10, 1943.

Filed in Office Secretary of State June 10, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 811

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONERS

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The Opinion of the Court Below

The opinion of the Supreme Court of Florida is reported in 19 Sou. (2d) 857. A copy of such opinion is attached to the Petition for Writ of Certiorari filed herein as Appendix "A" and appears in the record herein on page 26.

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February

13, 1935, Section 237(b), 28 U. S. C. A., Section 344(b). This case is one in which the validity of Sections 4 and 6 of H. B. 142 is drawn into question upon the ground that such sections on their face and as construed in the opinion of the Supreme Court of Florida are repugnant to the Constitution of the United States in various respects as more particularly set forth under the "Specification of Errors," infra. The decision of the Florida Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the Courts of Florida when the Supreme Court of that State on November 28, 1944, rendered a decision upholding the decree of the Trial Court. The constitutional questions as set below were raised in every possible stage of the proceeding below. The answer to the complaint raised such questions; these federal questions were again raised in the Assignment of Errors on appeal to the State Supreme Court; such federal questions were briefed and argued before the State Supreme Court; and that Court passed upon these federal questions in its opinion. A case or controversy clearly exists between the parties to this litigation, the State having permanently enjoined one petitioner from functioning as business representative, and the other petitioner from functioning as a labor organization, until the petitioners have complied with the requirements of Sections 4 and 6. A petition for Writ of Certiorari was filed on January 3, 1945, and on February 5, 1945, this Court granted such writ.

Statement of the Case

This case was instituted by the filing of an action for injunction by the Attorney General of the State of Florida against Petitioner Leo H. Hill and Petitioner United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local 234 (hereinafter referred

to as Local Union No. 234) (R. 1). Petitioner Hill is an officer of said Local Union and is also President of the Florida State Federation of Labor. The Petitioner Local Union No. 234 is a labor organization affiliated with the United Association of Journeymen Plumbers and Steamfitters of United States and Canada, A. F. of L., and operates in the City of Jacksonville, Florida (R. 1). The injunction sought to enjoin the Local Union from functioning as a labor organization and Leo H. Hill from acting as business agent or representative of said Local, unless and until they complied with the requirements of Chapter 21968, Laws of Florida, Acts of 1943 (hereinafter sometimes referred to by its popular name of H. B. 142) (R. 3). A copy of such Act is attached to the Petition for Writ of Certiorari herein as Appendix "B".

H. B. 142 is an Act "regulating the activities and affairs of labor unions, their officers, agents, members, organizers and other representatives." Under the Act unions and union representatives are licensed, and the activities of labor organizations, including their internal affairs, are regulated and circumscribed, as for instance, by the limiting of union initiation fees under Section 5, by the prescribing of methods of accounting under Section 7, and by placing restrictions on union elections, and upon picketing and striking under Section 9.

The injunction was premised upon and sought to enforce Sections 4 and 6 of the Act, and these are the only sections of the Act which are involved in this petition for certiorari. Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition of acting as a representative of any labor organization, and sets up a Board authorized to receive applications for and to issue and revoke such licenses. More specifically, a license must be obtained by a labor

representative in order for him to act as a "business agent", which under Section 2(2) of the Act is defined as any person acting on behalf of any labor organization in "(a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 6 of the Act requires that labor organizations operating in the State file a statement containing the name of the organization, its location, and the names and addresses of its officials, and to pay an annual license fee, as a condition of functioning in the State.

After the defendants had filed an answer (R. 4) admitting and denying certain allegations of the complaint and asserting that Sections 4 and 6 violated the State and Federal Constitutions in various respects as more particularly set forth under the "Specification of Errors," infra, the case was submitted to the Trial Court on a stipulation that the court would consider the case upon the pleadings (R. 16). Under the pleadings and stipulation the following minimum facts have been established: that the defendant, Local No. 234, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, is a labor organization or labor union within the commonly understood meaning of the term, consisting of a voluntary association of working people banded together for their mutual aid and protection, and is and has been functioning as such in the city of Jacksonville, State of Florida; that the defendant, Leo H. Hill, is a duly authorized and paid representative of said labor organization, acting on behalf of such labor organization and its members in the State of Florida, among other things, in the soliciting and procuring from employees membership or authorization cards in labor organizations in the process of organizing and soliciting and receiving from employers privileges and benefits for

employees in the process of collective bargaining; that such defendants had not complied with the requirements of Sections 4 and 6 of H. B. 142.

The Trial Court issued a final decree on June 22, 1942 under which it found that Sections 4 and 6 were valid constitutional enactments and under which the Court enjoined the defendant, Leo H. Hill, "from acting as business agent for said labor organization until he shall thereafter duly procure said license," and the defendant, Local No. 234, "from functioning and operating as a labor organization or labor union, until it shall thereafter duly make such report and pay said fee" (R. 18).

The defendants thereupon filed assignments of error, (R. 19), in which the constitutional questions were again raised, and appealed the case to the Supreme Court of Florida. After hearing argument the Supreme Court of Florida on November 28, in a unanimous decision, sustained the decree of the Circuit Court and declared that Sections 4[1] and 6 of the Florida Act did not violate any provisions of the Federal Constitution (R. 26).

Specification of Errors

The Supreme Court of Florida erred in the following respects:

1. In holding that Sections 4 and 6 of H. B. 142 and the injunction issued thereunder do not impose a previous general restraint on or constitute a denial of the exercise of civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

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[1] The trial court and the Supreme Court of Florida judicially excised from Section 4 of the Act the words "and are of the opinion that the public interest requires that a license or permit should be issued to the applicant." (R. 28.)

2. In holding that Sections 4 and 6, applicable only to non-railroad unions under the exemption from the Act under Section 15 of railroad unions, are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

3. In holding that Sections 4 and 6 and the injunction issued thereunder do not deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

4. In holding that Section 2(2) of H. B. 142, defining persons required to take out licenses under Section 4, is not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

I

Section 6, by requiring the filing of certain statements by labor organizations as a condition to their existence and functioning, operates to impose a previous general restraint upon the right of working people to assemble and function through labor organizations. Under Section 6 petitioner Hill and the other members of Local #234 have been permanently enjoined from meeting together and assembling with their fellow workers in Local #234 and in and through such organization to discuss their mutual problems, disseminate information, and petition for redress of grievance. Consideration of the general nature and purpose of labor organizations supports the conclusion that labor organizations are essential to the functioning of democracy in an industrial society, and that the association of working people in labor organizations is a concomitant of the right of speech, assembly, press and petition, and the right to form

and function through labor organizations has the same standing under the Federal Constitution as the right to form and function through political or religious organizations. The cases recently decided by this Court and discussed in petitioners' brief in No. 588, this Term, indicate clearly that the First Amendment assures the broadest tolerable exercise of assemblage, speech and press for economic purposes in and through labor organizations, as well as for political, scientific and religious purposes in and through political, scientific or religious organizations. Even if Section 6 be considered mere registration as a condition to the exercise of rights of assembly and speech, it nevertheless operates previously to restrain—and by the injunction issued under Section 6 to prohibit—the exercise of rights basic to our democracy—rights freely and unconditionally granted under the Bill of Rights. Petitioners' argument does not imply that the operations of labor organizations are above regulation or beyond the law. Specific abusive conditions and practices can be and have been made criminal without impairing the exercise of the bare right of assembly and speech.

Section 4, which seeks to license the right of union representatives to solicit membership in labor organizations, similarly restrains the exercise of rights of speech and press. Under Section 4 petitioner Hill has been permanently enjoined from soliciting membership in Local #234. Section 4 does not attempt to regulate the time, place or manner of solicitation or the use of public streets or other public facilities with regard to public convenience, and it does not merely require registration for the purpose of identification. It imposes an outright license upon the right to invite others to join a lawful movement, and the State reserves to itself complete discretion to withhold or withdraw the license. The solicitation licensed under Section 6

is not commercial solicitation as for the sale of a commodity for private profit. The solicitation licensed is of the same nature as solicitation by evangelists urging membership in a religious organization or by advocates of a political cause urging membership in a political party, or as the solicitation by any person urging membership in any laudable cause or movement, whether it be a political, economic, scientific or religious one. The cases indicate that the bare right so to solicit is a concomitant of free speech and press protected under the First Amendment and can be withheld only under circumstances of grave and immediate danger to interests which the State is free to protect.

II

Sections 4 and 6 are applicable only to associations of workers and not to associations of employers or other associations whose impact upon the public is similar to that of labor organizations; accordingly such sections are discriminatory. In particular such sections deny petitioner Local #234 equal protection of the laws, for the reason that other classes of labor organizations (unions of railroad employees) situated similarly to petitioner have been exempt from the requirement of such sections. The exemption of labor organizations of employees subject to the Railway Labor Act is arbitrary and without basis, the Railway Labor Act accomplishing none of the purposes of and having no relevance to the objectives of the Alabama law. There is no factual difference between the manner in which organizations of railroad employees function in so far as the requirements of Sections 4 and 6 are concerned and the manner in which organizations of nonrailroad employees function—as a matter of fact, both such organizations are

often affiliated with the same parent organization and operate under identical constitutions and by-laws.

III

Sections 4 and 6 deprive petitioners of rights granted under the National Labor Relations Act. Section 6, by restraining and conditioning every aspect of the "functioning" of labor organizations, conditions the right to engage in collective bargaining, as well as the right to engage in concerted activities for mutual aid and protection, although both such rights are unconditionally granted under Section 7 of the National Labor Relations Act. Section 4 seeks to license the right of union representatives to solicit employees to join a labor organization and seeks to license the right of union representatives to solicit benefits for employees in the process of collective bargaining, both of which rights are likewise unconditionally granted under the National Labor Relations Act. There exists an irreconcilable conflict between the requirements of Sections 4 and 6 and the exercise of rights granted under the National Labor Relations Act. The State cannot thus condition or limit rights granted by Congress in the effectuation of a valid Federal purpose lest such purpose be frustrated.

IV

Section 4 is so ambiguous as to deny due process of law. The definition of a "business agent", required to obtain a license under Section 4, does not sufficiently inform union representatives as to just when and under what circumstances it is necessary for them to procure a license in order to act. It is impossible to tell what acts are included under the term "the issuance of • • • rights granted or claimed in or by a labor organization," or by the term "soliciting or receiving from any employer any right or

privilege for employees." Criminal legislation phrased so vaguely that persons of reasonable intelligence would necessarily differ as to its meaning and application violates the first essential of due process.

ARGUMENT

I

Sections 4 and 6 and the injunction issued thereunder impose a previous general restraint upon and prohibit the exercise of civil rights granted under the First Amendment and protected against infringement by the State under the Fourteenth Amendment.

A. THE INVALIDITY OF SECTION 6

Section 6, although providing simply for the filing of annual reports, operates to impose an unlawful restraint upon the right of working people to assemble into and function through labor organizations. By virtue of Section 6 the State of Florida has enjoined petitioner Local #234 and its members "from functioning and operating as a labor organization or labor union" unless and until such union has complied with the filing requirements prescribed under Section 6. Such a prohibition means, of course, that the members of Local #234, including the petitioner Hill, cannot meet together for purposes of common consultation and discussion of their economic problems, or for purposes of disseminating information to the general membership, to workers in the same trade, or to the public generally concerning conditions in industry or the facts of any particular labor dispute; or for the purpose of jointly petitioning their employers, their State or Federal legislative representatives, or the general public, for the redress of grievances; or for the purpose of engaging in collective bargaining; or for

the purpose of conducting organizational campaigns and soliciting new members; or for any of the other usual purposes of labor organizations. The right to engage in any and all of these activities has been flatly and permanently denied petitioner Hill and all of the other members of Local #234 under the injunction which has been sustained by the Florida Supreme Court.

It is petitioners' contention that Section 6, with the pervasive threat of blanket injunction authorized thereunder, on its face imposes a previous general restraint upon the exercise by the members of Local #234 and petitioner Hill of their civil rights of assembly, speech and petition, and that such section, as applied in the present case, operates as an outright denial of such rights.

It should be noted at the outset that Section 6 does not strike at any particular abuse; all labor organizations and their members, of whatever class or character and whatever their purposes and manner of operation, are permitted to function in the State if the conditions of Section 6 are complied with.

Further, the difference between the effect of failure to comply with Section 6 of the Florida Act and failure to comply with the Revenue Act of 1943, Title I, Section 1, 17(a), 58 Stat. 36, 26 U. S. C. 54(f) requiring labor organizations to file certain statements in respect to their income, should be noted. Failure to file under the Federal Act merely imposes penalties upon those individuals responsible for the filing (53 Stat. 28, 26 U. S. C. 54(a)(b)(d), and 53 Stat. 62, 26 U. S. C. 145); it does not operate as a forfeit of all rights of the membership to meet and to engage in discussion and dissemination of information for their economic protection and advancement as does the Florida Act.

The basis upon which Section 6, as well as Section 4 and the injunction issued thereunder, was upheld by the State Court was stated to be as follows:

> "Labor unions, like other trade, professional and business organizations are concerned with the business of making a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, . . . The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

The brief filed by the petitioners in *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, No. 588, October Term, 1944 sets forth (pages 25 to 41) the manner in which the formation and the day-to-day functioning of labor organizations involve the exercise of the civil rights of assembly, speech, press and petition. The distinction between regulation of a commercial activity and legislation generally restraining or conditioning the exercise of civil rights, is there referred to, and cases are cited which indicate that the bare right of working people to assemble into and function through labor organizations in the holding of meetings, the dissemination of information, and the petitioning for redress of grievances, is one protected under the First Amendment. As such, the right cannot be conditioned or licensed by the State, nor its effective exercise impaired or diminished. The Court is respectfully referred to that portion of the brief in No. 588 in support of petitioners' argument that Section 6 of the Florida Act, both on its face and as applied in the present case, is invalid.

It may be argued that the comparatively simple requirements of Section 6 do not involve the elements of a license,

as do the more elaborate requirements of Section 7 of the Alabama Act under the decision of this Court in *International Text Book* v. *Pigg*, 217 U. S. 106, and that Section 6 is merely a requirement of registration for the purposes of identification. But even if this be assumed, Section 6 must nevertheless fall. The majority of this Court has specifically indicated, in the recent case of *Thomas* v. *Collins*, decided January 8, 1945, No. 14, October Term, 1944, that the State has no power to impose even as much as a registration requirement as a condition to the exercise of any of the great rights established under the First Amendment as essential to the democratic process:

> "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

In any event, Section 6, as applied in the present case, involves a great deal more than mere registration. Section 6 has been utilized as a device for complete prohibition against the exercise of the rights of assembly and speech by requiring compliance with Section 6 as a condition of such exercise and making such condition the foundation for the blanket injunction imposed upon Local #234. This the State clearly cannot do.

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this

> can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order." (*Thomas* v. *Collins, supra.*)

It is respectfully submitted that Section 6 operates to restrain and condition, and as applied in the present case to prevent, the exercise by the members of Local #234 and petitioner Hill of their civil rights, and accordingly such section and the injunction issued thereunder must be held invalid under the decisions discussed in the Brief of Petitioners in No. 588, pages 27 to 39.

B. THE INVALIDITY OF SECTION 4

1. *The Effect of Section 4*

Section 4 of H.B. 142, which licenses union "business agents", even more clearly operates to restrain and deny the exercise of civil rights. Under Section 4 petitioner Hill has been enjoined from acting as a "business agent" for Local #234 unless and until he obtains the said license. The term "business agent" is defined in Section 2(2) of the Florida Act as including "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

Thus, under Section 4, petitioner Hill must procure a license in order to solicit, and until he does so has been enjoined from soliciting, by word of mouth, by pamphlet or by any other form of communication, (1) membership in Local #234 and (2) benefits for members of Local #234 in the process of collective bargaining.

Although Section 2(2)(a) refers to and restricts the issuance of membership or authorization cards, the effect of the section is to restrict the solicitation of members. The Attorney General does not otherwise argue, and the Florida Supreme Court upheld Section 4 on the premise that it did involve a restriction on the solicitation of membership (R. 30). The limitation of Section 2(2)(a) to solicitation which involves the issuance of membership or authorization cards is not a limitation which permits petitioner nevertheless to exercise the essence of the right of solicitation; on the contrary, in order for solicitation into labor organizations to be at all effective, it is obviously necessary that the solicitor be enabled to accomplish the very object of this solicitation by obtaining membership applications or representation authorizations. The obtaining of membership or authorization cards is an integral part of the act of soliciting membership; it is a necessary incident to the exercise of the general right of solicitation. Solicitation for membership and participation in labor organization is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Sections 7 and 9. As a practical matter, it is necessary to submit application or membership cards to the National Labor Relations Board as evidence that the organization filing a petition under Section 9 of the National Labor Relations Act has a representation interest sufficient for the Board to act.[1] Thus, the freedom of the individual worker to speak effectively through his organization in collective bargaining is, in a very real way, dependent upon his freedom to solicit his fellow workers for

[1] See Eighth Annual Report, National Labor Relations Board, page 44.

authorization cards indicating their willingness to join with him. In substance and in effect, Section 4 clearly restricts the general right to solicit employees to join a labor organization.

The question at bar, then, is simply this: can a State license the right of union representatives to solicit employees to join a union, as distinguished from imposing a registration or identification requirement as a condition to the exercise of such right?

2. *The Distinction between a License and an Identification Requirement*

The distinction between a license and a registration or identification requirement is an important, in fact a controlling, one, and it should be noted at the outset that Section 4 is a licensing and not an identication requirement. The State uses the terms "license" and "permit" in Section 4; the Attorney General refers to the requirement of Section 4 as a "license" both in his complaint (R. 2,3) and in his argument (see Brief in Opposition to Petition for Writ of Certiorari, page 7); and the Florida Supreme Court regarded Section 4 as a licensing requirement throughout its opinion and did not attempt to make the distinction made by the Texas Supreme Court in the Thomas case (*Thomas* v. *Collins*, 141 Tex., 591), and refererd to by Mr. Justice Roberts in his dissent in *Thomas* v. *Collins, supra*, namely, that Section 5 of the Texas Act constituted merely a non-discretionary identification or registration requirement and not a license. Under Section 4 of the Florida Act, the State has reserved to itself complete discretion in the issuance of licenses to labor representatives, and such discretion has not been eliminated by the removal by the Florida Supreme Court of that portion of Section 4 stating that the license is conditioned, among other things, on the issuing board being "of the opinion that the public interest requires that a

license or permit should be issued to such applicant." Section 4 still provides for the suspension or revocation of licenses which presumably must be done in the discretion or good judgment of the Board having power to issue the licenses, and the section still provides for the filing of objections prior to the issuance of any license which, presumably, the Board would have jurisdiction and authority to pass upon. There is still a discretion lodged in a majority of the Board to find the applicant qualified pursuant to the terms of the Act, that is, to find that he has "good moral character" and has been a resident of the United States for a period of at least ten years prior to making application for a license. And finally, under Section 10 the Attorney General is authorized to institute proceedings for the revocation or suspension of licenses. See and compare the matter set forth in footnote 24 in the opinion of the majority in *Thomas* v. *Collins, supra.*

In any event, the exercise of civil rights is unduly impaired and burdened by the provisions in Section 4 for the holding of applications for permits on file for a period of thirty days, between which time any persons may make objections to the issuing of such permit, and for the provisions for further hearings upon such objections if made. The delay thus caused, even if no objections are filed, would entirely defeat the organizational process which, of necessity, requires that the right of solicitation be exercised freely and at any time when the necessity for the same arises.

3. *What is not involved under Section 4. The distinction between commercial solicitation and solicitation to join a lawful movement.*

It will assist in determining the validity of the requirements of Section 4 to note what is not involved under such section.

Section 4 does not attempt to regulate the time, place and manner of solicitation or the use of public streets or other public facilities, nor does it in any other way attempt to regulate solicitation with regard to public convenience. Once the license is procured, union representatives can solicit without restraint; if the license is not obtained, solicitation is entirely prohibited.

Section 4 is not limited to the solicitation of funds or sums of money. It licenses mere solicitation to join a labor organization when membership or authorization cards are issued in connection therewith. This may or may not involve assumption of a financial obligation to the union; in the case of authorization cards solicited for the purpose of making a representation showing, as before the National Labor Relations Board, it usually does not. Indeed, the whole purpose and end of the solicitation of membership has no necessary or immediate relationship to the collection of dues or fees. In seeking the support of their fellow workers for their organization, the members of a labor organization merely seek the formation of a collective bargaining entity authorized to express the voice of worker in the industrial forum. It is fairly common practice during the period of organization for the members of a union to attach no dues obligation to membership until a collective bargaining relationship has been established. And, of course, the right of a labor organization to represent its members depends solely on authorization and not on dues payment. *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 338-9; *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C.C.A. 9).

Finally, Section 4 does not seek to license mere commercial solicitation, as, for instance, solicitation to sell vacuum cleaners or razor blades for private profit. It does seek

to license solicitation which is in the nature of evangelism or other propagandization which seeks by personal solicitation to induce individuals to support or join some laudable and non-commercial cause or movement—in the case of labor organizations, solicitation to join a cause "needed and appropriate to enable the members of society to cope with the exigencies of their period." See *Thornhill* v. *Alabama*, 310 U. S. 88, at 101. It has been demonstrated in the brief filed by petitioners in *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, No. 588, October Term, 1944, pages 25 to 41, that labor organizations, as unincorporated, non-profit, voluntary associations of working people gathered together for purposes of mutual aid and protection, are a necessary institution in a modern industrial society if the aims of the democracy established under our Constitution are to be fulfilled; that such organizations are, in their formation and functioning, on the same plane as religious societies, political parties or scientific organizations. The assemblage of working people into labor unions and the solicitation of workers to join in the common cause of labor cannot be analogized to the formation of business concerns or the solicitation of sales for private profit. The solicitation of members necessarily involves the propagandization of ideas and the dissemination of beliefs. Any such invitation to join and take part in a common cause for a worthy objective can hardly be compared to solicitation in the sale of a commercial article for private profit, and it is submitted that the right to solicit membership in a labor organization has the same standing under the Federal Constitution as the right of evangelists to solicit membership in a religious organization, or as the right of advocates of a particular political cause to solicit membership in their political party, or as the right of any person to seek to induce others to join any laudable cause,

whether it be a political, economic, scientific or religious one. Such a right finds protection under the First Amendment as an exercise of freedom of speech, and, as such, it cannot be granted or withheld by the State through the requirement of a license or permit as a condition of its exercise, whatever might be the right of the State to regulate its exercise as to time, place and manner and as to identification of the solicitor.

4. *The applicable decisions.*

The cases make clear that this right of solicitation is one which the State can grant or withhold only under circumstances of grave and immediate or clear and present danger to interests which the State is free to protect.

The case of *Herndon* v. *Lowry*, 301 U. S. 242, turned upon the right of individuals to solicit membership in political parties. That case specifically held that the right to solicit membership in a political party was a concomitant of the right of free speech.

In *Fiske* v. *Kansas*, 274 U. S. 380, the Supreme Court directly held that the inducing or securing of persons to sign applications for membership in, or the issuing of membership cards in, a labor organization called the "Workers' Industrial Union," a branch of the Industrial Workers of the World, was a right entitled to constitutional protection when peacefully engaged in. In that case the defendant had been convicted of " 'knowingly and feloniously persuading, inducing and securing' certain persons 'to sign an application for membership in * * * and by issuing to' them 'membership cards' in a certain Workers' Industrial Union, 'a branch of and component part of the Industrial Workers of the World organization * * *' "; the case is an exact parallel to the instant case.

Hague v. *C. I. O.*, 307 U. S. 496, involved the exercise of rights of speech and assembly not merely by picketing and

distribution of handbills but further by the holding of meetings and solicitation of members. The opinion of Mr. Justice, now Chief Justice, Stone stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.) Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes has been specifically declared by this Court in *Martin* v. *City of Struthers*, 319 U. S. 141, 145-6:

> "'Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of brining them to the notice of individuals is their distribution at the homes of the people.' *Schneider* v. *State, supra*, 308 U. S. 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members * * * Door to door distribution of circulars is essentially to the poorly financed causes of little people."

Cantwell v. *Connecticut*, 310 U. S. 296, sets forth the dangers of a licensing system and the distinction between licens-

ing and registration for purposes of identification. In that case the right to solicit adherents to and funds for a religious sect by door to door canvassing was involved. The Connecticut statute prohibited the solicitation of "money, services or subscriptions, or any valuable thing for any alleged religious, charitable or philanthropic cause" without the obtaining of a license. The Court upheld the appellants' contention that "to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution." In discussing the permissible restraints upon non-commercial solicitation, the Court stated as follows:

> "It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited." (310 U. S. at 304.)
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> "The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that 'it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed. It is sug-

gested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

"To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action." (310 U. S. at 305-6.)

The foregoing statement sufficiently answers the contention of the Attorney General (Brief in Opposition to Petition for Writ of Certiorari, p. 8) that any abuse of discretion under Section 4 by the state licensing officers can be corrected by the courts.

Schneider v. Irvington, 308 U. S. 147, involved *inter alia* a statute of the town of Irvington, New Jersey, requiring a permit for any manner of house to house solicitation. The statute authorized, as does Section 4 of the Florida Act, refusal of a permit if the applicant was not of good character. The statute was applied to a member of a religious sect who had sought, by house to house canvassing, to solicit funds and to obtain adherents to her cause without obtaining a license. In striking down the ordinance as an infringement upon the rights of speech and petition, this Court noted a distinction between the type of solicitation there engaged in and ordinary commercial solicitation, and indicated that the solicitation for a religious cause was in

the same category as solicitation for an economic, social or political cause. The Court stated as follows:

> "While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes. If it covers the petitioner's activities *it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers.* It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and finger-printing. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." (308 U. S. at 163-4)

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> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval; with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses

may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." (308 U. S. at 164.) (Emphasis supplied.)

Another statute before the Court in the *Schneider* case involved solicitation through the distribution of handbills by a union representative for public support in respect to a particular labor dispute, and this solicitation was upheld as a concomitant of the right of free speech.

Follett v. *McCormick*, 64 S. Ct. 717, involved a license fee on book agents which was applied to a distributor of religious literature. In striking down the license fee as a restraint upon freedom of speech and press, this Court very significantly stated as follows:

"The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views. He who makes a profession of evangelism is not in a less preferred position than the casual worker."

It would appear from this case that a worker who solicits individuals to join labor organizations as a means of spreading his economic beliefs, and receives contributions in the form of membership fees, is in no less a preferred position than a religious colporteur who distributes and sells religious literature as a means of spreading the distributor's religious beliefs.

Murdock v. *Pennsylvania*, 319 U. S. 105, involved the right of the State of Pennsylvania to impose a license tax upon the privilege of religious colporteurs to solicit funds in support of their organization by the house to house sale

of books and pamphlets. In holding that this right could not be previously restrained any more by a flat tax than it could be by a license, and in answering the argument that the license tax in question did not in fact restrain the activity, the Court stated as follows:

> "It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce. (McGoldrick v. Berwind-White Coal Min. Co., 309 U. S. 33, 56-58, 84 L. ed. 565, 576, 577, 60 S. Ct. 388, 128 A. L. R. 876), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. Id. 309 U. S. p. 47, 84 L. ed. 570, 60 S. Ct. 388, 128 A. L. R. 876, and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. * * * It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 U. S. pp. 607-609, 620, 623, 86 L. ed. 1706, 1707, 1713, 1715, 62 S. Ct. 1231, 141 A. L. R. 514. In that case as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, ad-

dresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the Constitution." Blue Island v. Kozul, 379 Ill. 511, 519, 41 N. E. (2d) 515. So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment." (319 U. S. at 112-4.)

In that case the Court indicated the distinction between solicitation for a religious or other non-commercial cause and purely commercial solicitation for the sale of a product for private profit. The Court stated as follows:

"Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in Jamison v. Texas, 318 U. S. 413, 417, ante, 869, 873, 63 S. Ct. 669. 'The state can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such

leaflets may have "a civic appeal, or a moral platitude" appended. Valentine v. Chrestenson, 316 U. S. 52, 55, 86, L. ed. 1262, 1265, 62 S. Ct. 920. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.' But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way." (319 U. S. at 110-11.)

The foregoing statement by this Court in the *Murdock* case also serves to answer the contention that Section 4 is valid because it is limited to solicitation by persons who receive pecuniary or financial consideration therefor. The receipt by petitioner of a pecuniary consideration in the form of a salary for his services no more operates to transmute his functions into a commercial category than does the payment of an income to a preacher or the payment of

a salary to a newspaper editor. As stated more recently in *Follett* v. *Town of McCormick, supra:*

> "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living."

Similarly, the State of Florida can derive no constitutional support for its statute by characterizing appellant and other labor spokesmen as "business agents" and thereby seeking to place them under regulation as though their activities constituted business or commercial transactions. As the Supreme Court said in *Near* v. *Minnesota,* 283 U. S. 697:

> "Characterizing the publication as a business and the business as a nuisance does not permit an invasion of the constitutional immunity against restraint."

The *Murdock* case, *supra,* further serves to answer the contention of the Attorney General that petitioners' argument seeks to place labor representatives above the law. Such an argument disregards the distinction between legislation narrowly drawn to prevent specific abuses and legislation which broadly restrains the exercise of constitutionally granted rights.

> "Jehovah's Witnesses are not 'above the law.' But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. ed. 1031, 62 S. Ct. 766, supra. Nor do we have

here, as we did in Cox v. New Hampshire, 312 U. S. 569, 85 L. ed. 1049, 61 S. Ct. 762, 133 A. L. R. 1396, supra, and Chaplinsky v. New Hampshire, supra, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. * * * As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors * * * Nor can the present ordinance survive if we assume that it has been construed to apply only to solicitation from house to house. The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (Jones v. Opelika) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion." (319 U. S. at 116-17.)

More closely in point than any of the other cases above discused is the recent case of *Thomas* v. *Collins, supra.* There the status under the Constitution of the right of labor representatives to solicit membership in labor organizations was directly involved, and it is submitted that the case conclusively indicates that Section 4 of the Florida Act must be considered as transcending constitutional limitations. Although the *Thomas* case went off on the point that the solicitation of individuals involved in the case was inseverably combined with a general solicitation in the form of a speech, and although the majority holding was merely that the right to make such general solicitation in the form

of a speech cannot be either licensed or conditioned by the requirement of registration for identification purposes, there is sufficient in the dictum of the majority and in the holding of the dissent to indicate that Section 4, both on its face and as applied to petitioner in this case, must be considered invalid as constituting a previous general restraint upon the right of speech and press. In substance, the dictum in the majority opinion and the holding of the minority was to this effect: the solicitation of individuals to join a labor organization involves, but it does not entirely constitute, the exercise of free speech and press; as such, the right so to solicit cannot be entirely withdrawn or prohibited by the State as by a licensing system under which the State reserves the power to withhold the license, but it can be regulated as by the requirement of registration for identification purposes or as by the regulation of time, place and manner of soliciting with reference to the public convenience and safety. This, we respectfully submit, is law which reconciles the conflicting interests on the one hand of society in the protection of the public from possible abuses, and on the other hand of the individual in the exercise of his right of speech and press for the purpose of enlisting support in a lawful movement; and is law which is in harmony with the law pronounced in the cases from *Fiske* v. *Kansas* through the Jehovah Witnesses' cases above discussed.

Specifically, the dictum of the majority upon which petitioners rely is as follows. After stating that a requirement of registration in order to make a public speech to enlist support for a lawful movement is incompatible with the requirements of the First Amendment, the majority of the Court in the *Thomas* case went on to state:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free

discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitaiton would be quite different from the solicitation involved here. *It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider v. State, supra,* and *Cantwell v. Connecticut, supra.* That however must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly." (*Thomas v. Collins, supra.*) (Emphasis supplied.)

The regulation which the Court indicated was permissive in *Schneider* v. *State,* 308 U. S. 147, and *Cantwell* v. *Connecticut; supra,* was only in respect to time, place and manner of solicitation; or in respect to the imposition of a registration or licensing requirement; the Court was quick to invalidate any attempt by the State to withhold the bare right of solicitation.

"In these [Schneider, Cantwell] cases, however, the licensing requirements were far more than mere identification or previous registration and were held invalid because they vested discretion in the issuing authorities to censure the activity involved." (*Thomas* v. *Collins, supra.*)

The *Schneider* and the *Cantwell* and other related cases hold that the bare right of solicitation even of funds for non-commercial purposes was one which could not be licensed for the reason—a reason equally applicable in regard to the solicitation of members of a labor organization—that such solicitation unavoidably includes propagandizing in favor of, or disseminating information concerning, a lawful movement. It is one thing to require registration, or to prevent abuses incident to solicitation,

or to regulate the use of the public streets to suit public convenience; it is quite another thing to license the very right to solicit when such solicitation necessarily involves the dissemination of ideas and peaceful persuasion to associate with a laudable cause—in respect to labor organizations a cause which, as we have previously noted, is necessary "to enable the members of society to cope with the exigencies of their period."

In the *Thomas* case, the majority made clear that labor organizations

> "* * * cannot claim special immunity from regulation. Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. This Court has recognized that 'in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. * * * Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.' *Thornhill v. Alabama*, 310 U. S. 88, 102-103; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478. The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. *Hague v. Committee for Industrial Organization*, 307 U. S. 496. The Texas court, in its disposition of the cause, did not give sufficient weight to this consideration, more particularly by its failure to take account of the blanketing effect of the prohibition's present application upon public discussion and also of the bearing of the clear and present danger test in these circumstances." (*Thomas* v. *Collins*, *supra*.)

A similar comment is applicable to the disposition of the cause by the Florida court. Freedom of speech and press under the Bill of Rights relates to more than abstract discussion; it includes the right to persuade to a point of view and to take action in support of that point of view. It must include the right to persuade individuals to actively join in a lawful movement, whether that movement be religious, political, economic or scientific. The *Thomas* case makes clear that the First Amendment

> "• • • extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams* v. *United States*, 250 U. S. 616, 624, and *Gitlow v. New York*, 268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes. Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given.
>
> "Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469. Decisions of other courts have done likewise. When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. Cf. *National Labor Relations Board v. Virginia Electric & Power Co., supra.* But short of that limit the employer's freedom cannot be impaired. *The Constitution protects no less the employees' converse right.* Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection." (*Thomas v. Collins, supra.*) (Emphasis supplied.)

The dissenting opinion in the *Thomas* case upheld Section 5 of the Texas statute because, as was indicated by the Supreme Court of that State, the section did not repose any discretion in the State to withhold the right to solicit membership but merely required identification of persons pursuing solicitation of members for an organization as a business:

> "* * * if anyone pursues solicitation as a business for profit, of members for any organization, religious, secular or business, his calling does not bar the state from requiring him to identify himself as what he is—a paid solicitor."

There is no suggestion in the dissent that the right to solicit membership in any religious, secular or business organization could be licensed by the State, or its exercise granted or withheld in the discretion of the State. On the contrary, the dissent made clear that in respect to Section 5 of the Texas Act

> "To comply with the law the appellant need only have furnished his name and affiliation, and his credentials. The statute nowise regulates, curtails, or bans his activities."
>
> * * * * * * *
>
> "We should face a very different question if the statute attempted to define the necessary qualifications of an organizer; purported to regulate what organizers might say; limited their movements or activities; essayed to regulate time, place or purpose of meetings; or restricted speakers in the expression of views. But it does none of these things." *(Thomas* v. *Collins, supra.)*

It is respectfully submitted that, under the cases above discussed and in particular under the *Thomas* case, Section 4 of the Florida Act purporting to license labor representa-

tives in the solicitation of members, and empowering the State to withhold the license in its discretion, constitutes a previous general restraint upon the exercise by petitioner Hill of his rights of press, speech and petition and, as such, must be declared invalid on its face. It is further submitted that Section 4, as applied to petitioner Hill, in so far as it seeks permanently to enjoin him from seeking to solicit by any form of oral or written communication membership in Local #234, constitutes a denial of his right to speech, press and petition, and for that reason must be declared invalid.

II

Sections 4 and 6 deny petitioners equal protection of the laws in violation of the Fourteenth Amendment.

The Florida Act, like the Alabama Act involved in *Alabama State Federation of Labor, et al.*, v. *McAdory, et al.*, No. 588, October Term, 1944, is directed solely against one type of voluntary association—namely, labor organizations—and, like the Alabama Act, exempts "all railway labor organizations and the members thereof • • • as long as they are regulated by any act or acts of the Congress of the United States." Accordingly, the Florida Act is subject to the same objections under the equal protection of the laws clause of the Fourteenth Amendment that have been made against the Alabama Act in the brief filed by petitioners in No. 588, and the attention of the Court is respectfully directed to pages 57 to 67 of that brief for a discussion in support of the argument that Sections 4 and 6 of the Florida Act are discriminatory and deny petitioners equal protection of the laws.[2] The purpose and objectives ac-

[2] In holding that the Florida Act did not violate the equal protection of the laws clause of the Fourteenth Amendment, the Florida Supreme Court

complished by the Railway Labor Act are no more relevant to the purposes and objectives of the Florida Act than they are to those of the Alabama Act; the fact that unions of railway employees are covered by the Railway Labor Act while other unions are not is no indication whatsoever that "the danger is characteristic of the class named." (See Brief in Opposition to Petition for Writ of Certiorari, p. 14.) Clearly, it is discrimination in the highest degree to require the filing of statements by Local #234 as a condition of its functioning, while permitting another local affiliated with the same parent body—the United Association of Journeymen Plumbers and Steamfitters of United States and Canada—to operate without such restriction merely because the members of that local are employed by railroad companies. And surely, it is a denial of the equal protection of the laws to require a license of a business agent of Local #234 as a condition of soliciting membership or soliciting employee benefits in the process of collective bargaining, while not requiring such a license for the business agent of another local of the parent union to do the same acts when the members of that local are under the Railway Labor Act.

III

Sections 4 and 6 and the injunction issued thereunder deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

A. SECTION 6

Section 6 of the Florida Act, like Section 7 of the Alabama Act, seeks to condition the right of labor organizations to

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relied solely upon the decision of the Alabama Supreme Court in the *McAdory* case (*Alabama State Federation of Labor, et al.*, v. *McAdory*, 18 So. (2d) 810) (R. 34). *American Federation of Labor* v. *Reilly*, re-

"function" in the State unless certain state-imposed conditions are met. Indeed, the State of Florida has permanently enjoined petitioner Local #234 from "functioning and operating as a labor organization or labor union" unless and until it complies with such Section 6.[3]

It is, of course, one of the "functions" of labor organizations to engage in collective bargaining and any other concerted activities for the purpose of mutual aid and protection. The right to engage in such activities is specifically granted under Section 7 of the National Labor Relations Act, which provides that "employees shall have the right • • • to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." To prohibit a labor organization from functioning at all, then, is clearly a denial of this right and operates to frustrate the policy of Congress, which is "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, or the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

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ferred to by the Alabama Court, is a trial court decision which was subsequently reversed by the Colorado Supreme Court, the Colorado Act being held unconstitutional on other grounds (*American Federation of Labor, et al.*, v. *Reilly, et al.*, No. 15446, decided December 21, 1944).

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[3] Petitioner Local #234 has a standing to challenge the constitutionality of Section 6 as being in conflict with the National Labor Relations Act for the reason that under the stipulation that the cause be determined upon the pleadings, without the taking of testimony (R. 17), it appears that the Florida Act does affect and involve employees and employers engaged in interstate commerce and otherwise subject to the National Labor

It is submitted, accordingly, that Section 6, both on its face and as applied to petitioner Local #234, violates Article VI of the Federal Constitution (declaring that the laws of the United States are supreme) by denying rights granted by Congress and thereby thwarting effectuation of a valid Federal purpose. The discussion in petitioners' brief in No. 588 respecting the invalidity of Section 7 of the Alabama Act as being in conflict with the National Labor Relations Act is applicable to the argument that Section 6 of the Florida Act is invalid, and the Court is respectfully referred to such discussion on pages 68 to 71 of such brief.

B. SECTION 4

Section 4 seeks to license two types of activity, the right to engage in which is unconditionally granted under the National Labor Relations Act. By virtue of the definition of "business agent" in Section 2(2) of the Florida Act, union representatives must obtain State permission in order to solicit employees to join and in order to issue or obtain membership or authorization cards in connection with such solicitation. Further, such permission must be obtained in order for such a representative to solicit benefits for employees in the process of collective bargaining. The discussion under Point I of this brief makes clear that the right to solicit membership and obtain authorization or membership cards is an indispensable concomitant of the right of self-organization. The right of self-organization is specifically

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Relations Act, and it is specifically alleged that such Act is in conflict with the National Labor Relations Act (R. 9-10). As a matter of fact, the members of Local #234 are employed by a large number of employers who are engaged in interstate commerce and who are subject to the National Labor Relations Act, and no challenge to this fact was made until the case reached this Court, the Supreme Court of Alabama and the trial court both having proceeded upon the assumption that petitioners were in a position to raise the issue of conflict with the Wagner Act. Under such circumstances, respondent cannot call the existence of these facts into question at this late time. See *Brown* v. *Garrett*, 201 U. S. 184.

granted under Section 7 of the Act, and protection of that right is declared to be the policy of the United States under Section 1 of the Act. This right of self-organization could hardly be realized if solicitation to join a labor union or the issuance of membership or authorization cards to prospective members by union represntatives were forbidden; nevertheless the State has asserted a privilege to forbid such solicitation. In *Thomas* v. *Collins, supra*, this Court said:

> "The campaign, and the meeting, were incidents of an impending election for collective bargaining agent, previously ordered by national authority pursuant to the guaranties of national law. Those guaranties include the workers' right to organize freely for collective barghining. And this comprehends whatever may be appropriate and lawful to accomplish and maintain such organization. It included, in this case, the right to designate Local No. 1002 or any other union or agency as the employees' representative. It included their right fully and freely to discuss and be informed concerning this choice, privately or in public assembly. Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice."

Section 9 of the National Labor Relations Act permits labor organizations or individuals to petition the National Labor Relations Board for certification of a particular labor organization as the exclusive collective bargaining representative of all the employees in an appropriate bargaining unit. As a matter of procedure,[4] Section 9 cannot be invoked without submitting to the Regional Director of any particular region authorization or membership cards

[4] Eighth Annual Report, National Labor Relations Board, p. 44.

as evidence in support of the petitioning union's claim that it represents a sufficiently substantial number of employees to warrant the Board's ordering a hearing and calling an election.

The restriction on soliciting benefits from employers in the process of collective bargaining is equally in conflict with the National Labor Relations Act and for reasons similar to those stated for the invalidity of Section 6. The right to engage in collective bargaining and to obtain benefits under that process by and through duly appointed representatives must exist other than at the sufferance of the State if the basic purposes of the National Labor Relations Act are to be achieved.

That the requirements of Section 4 do in practical effect prevent engaging in activities and pursuing rights established under the National Labor Relations Act is no mere supposition; in *In the Matter of Eppinger & Russell Company*, 56 N. L. R. B. No. 226, the National Labor Relations Board had before it a case in which a Florida employer had refused to bargain with a Florida union through a Florida business agent for the reason that such business agent had not obtained a license to act as the Union's representative under Section 4. The Board, in a unanimous decision, held that the employer in so refusing had violated the provisions of the National Labor Relations Act by denying rights established thereunder, and that the provisions of the Florida law relied upon by the employer to excuse his breach of the National Labor Relations Act "must yield before the paramount authority of Congress expresesd in a valid and applicable federal law."

It is submitted that, under the decisions discussed in petitioners' brief in No. 588, Sections 4 and 6 must be declared invalid under Article VI of the United States Consitution as being in conflict with the Federal Act in a

field in which the Federal government has paramount authority.

IV

Section 2(2), upon which Section 4 is dependent for operation, is so ambiguous as to deny due process of law.

The Florida Act, like the Alabama Act, creates crimes not known to the common law, and under it heretofore innocent acts customarily engaged in are apparently made wrongful. As stated in the brief filed in No. 588 (pages 71 to 75), it is incumbent upon the State in thus creating crimes to be sufficiently explicit to inform as to just what conduct on the individual's part will render him liable to criminal penalties. The State cannot compel an individual to speculate at his peril concerning either the meaning of a particular statute or its application to him.

It is submitted that the definition of a "business agent" contained in Section 2(2) of the Florida Act does not sufficiently inform a representative of a union as to just when and under what circumstances it is necessary for him to secure a license in order to act. For instance, what constitutes an "evidence of rights granted or claimed in, or by, a labor organization" under subsection (a) of the definition? Certainly, a contract or any other legal document drawn up by an attorney for a labor organization for a fee would seem to come under this clause, and accordingly attorneys can henceforth act for labor organizations, draw up bills of sale, contracts, deeds, or any other written documents, only at the peril of being criminally prosecuted for a violation of H. B. 142 if they have not applied for and received licenses as business agents. A right granted, or claimed, in or by a labor organization may be any one of a thousand things; the term is so indefinite as to make impossible even citing a hypothetical example of what might be attempted.

Subsection (b) is equally ambiguous. What is meant by "receiving from an employer any right or privilege for employees"? A "right" or "privilege" in respect to what? And what particular type of a "right" or "privilege" out of the thousands known finding a status as such under the law? How is it possible for an educated layman or even an attorney, let alone a union member whose opportunities for education may have been limited, to determine just what is intended by this clause?

It is respectfully submitted that petitioner Hill and other members of Local #234 cannot be required to speculate at their peril concerning the meaning of these very ambiguous subsections, and that under the principles set forth on pages 71 to 75 of petitioners' brief in No. 588 Section 4 must be declared invalid as a denial of due process.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, petitioners have been denied and deprived of rights granted and secured under the Constitution and Laws of the United States by reason of Sections 4 and 6 of the Florida Act and the injunctions issued thereunder, and that accordingly the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

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FILE COPY

Supreme Court of the United States

October Term, 1944

No. 811

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL NO. 234,

PETITIONERS,

vs.

STATE OF FLORIDA, ex rel.,
J. TOM WATSON, Attorney General,

RESPONDENT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINION OF THE COURT BELOW

This brief is filed in reply to Petition for Writ of Certiorari to review a decision of the Supreme Court of the State of Florida, rendered on November 28, 1944 in the cause entitled Leo H. Hill, et al., vs. State of Florida, et al (Record 26-35). Such decision affirmed a decree of the Circuit Court for Duval County, Florida (Record 18).

JURISDICTIONAL STATEMENT

Petitioners contend that the Court has jurisdiction under the provision of the Act of Congress of February 13, 1935, Section 237(b), 28 U.S.C.A. Section 344(b), because the case is one in which the validity of sections 4 and 6 of H. B. 142 is drawn into question upon the ground that such sections on their face and as construed in the opinion of the Supreme Court of Florida are repugnant to the Constitution of the United States.

It is the contention of the Respondent, however, that it is not competent for the Court by certiorari to review and determine this cause, that the record shows that the Federal questions set forth in said petition are of such an unsubstantial nature as to cause said petition to be devoid of merit, and therefore frivolous, as is more particularly hereinafter set forth under "Argument of Respondent."

STATEMENT OF THE CASE

Respondent accepts the Petitioners' Statement of the Case. Respondent, however, deems it necessary to call the attention of the Court to the fact that Section 4 of

Chapter 21968, Laws of Florida, Acts of 1943, commonly and hereinafter referred to as House Bill No. 142, creates a State Licensing Board, composed of the Governor, Secretary of State and the State Superintendent of Public Instruction. Section 9(6) requires all business agents for labor unions to secure a permit from the State Licensing Board. As a prerequisite for securing such permit, applicants must furnish proof that they (a) have been a citizen of the United States for more than ten (10) years next preceding the application for the permit, (b) have not been convicted of a felony, (c) are of good moral character. Section 6 requires every labor organization to file annual reports giving (1) the name of the labor organization (2) the location of its office (3) the name and address of its officers and business agent. Both Sections 4 and 6 require a fee of One Dollar ($1.00) to defray the expense of the respective services provided for therein.

Section 2 (2) defines the term "business agent" as meaning "any person who shall *for a pecuniary or financial consideration*, act or attempt to act for any 'labor organization' in (a) *issuance* of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving *from any employer* any right or privilege *for employees.*"

The attention of the Court is also called to the fact that the Trial Court in its final decree, rendered June 22, 1944, by authority of Section 16 (a severability clause) judicially excised from Section 4 of the Act the words "and are of the opinion that the public interest requires that a license or permit should be issued to the applicant" (Record 18) which decree was affirmed by a unanimous decision of the Supreme Court of the State of Florida (Record 26-28).

QUESTIONS PRESENTED

Respondent accepts the Petitioners' statement of the Questions Presented.

ARGUMENT

I.

Petitioners' first question is as follows:

> "Do Sections 4 and 6 and the injunctions issued thereunder restrain or condition the exercise by petitioner of civil rights freely granted under the first amendment to the United States Constitution?"

The Trial Court and the Supreme Court of Florida answered this question in the negative, qualifying their answer, however, by deleting the provision from Section 4 which gave the issuing board power to determine whether "the public interest requires" the issuance of the license, because the deleted provision vested arbitrary power in the board, and was in conflict with the standard of qualification prescribed for one applying for a license to be a business agent of a labor union, and was thereby rendered unconstitutional.

The specific provisions of State law under attack are these: Section 4 of Chapter 21968, Laws of Florida, Acts of 1943, which reads as follows:

> "Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period of more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or

permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority to do so. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act and are of the opinion that the public interest requires that a license or permit should be issued to such applicant, then the Board shall by resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31, of the year for which issued unless sooner surrendered, suspended, or revoked."

NOTE: The Court below deleted the following words from Section 4:

"and are of the opinion that the public interest requires that a license or permit should be issued to such applicant, * * *."

Section 6 of said chapter reads as follows:

"Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;

(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar."

The determination of the constitutionality of Sections 4 and 6 also brings into consideration the following sections:

"Section 2(2). The term 'business agent' as used herein shall mean any person, without regard to title who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

"Section 9. It shall be unlawful for any person:

* * *

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit."

The State under its police power has the right to regulate business in order to protect the public health, welfare and morals. Gundling vs. Chicago, 177 U.S. 183, 188; Watson vs. Maryland, 218 U.S. 173, 176; Eubanks v. Richmond, 226 U.S. 137, 142; Sligh vs. Kirkwood, 237 U.S. 52, 59; Schmidinger vs. Chicago, 226 U.S. 578, 587; Camfield vs. U.S., 167 U.S. 518, 524; State vs. Lawrence, 213 N.C. 674, 197 S. E. 586, Certiorari denied 305 U.S. 638. For exercise of this right as related to voluntary associations, see New York vs. Zimmerman, 278 U.S. 63, 71-72; and as related to local problems thrown up by modern industry,

see American Federation of Labor vs. Swing, 312 U.S. 321, 325; Borden, et. al. vs. Sparks, Governor, 54 Fed. Sup. 300. In summary: "That the State has the power to regulate labor unions with a view to protecting the public interest is . . . hardly to be doubted." Thomas vs. Collins, decided by the Supreme Court of the United States, January 8, 1945, October Term, 1944, No. 14.

The State is primarily the judge of regulations required in the interest of public safety and welfare. Graves vs. Minnesota, 272 U.S. 425, 428; Gitlow vs. N.Y. 268 U.S. 652, 668. The discretion of the legislature is very large in exercise of the police power, both in determining what the public interests require, and measures and means necessary to protect such interests. Louisville & Nashville R. Co. vs. Kentucky, 161 U.S. 677, 701; Sterling vs. Constantin, 287 U.S. 378, 398-399. The judgment of the highest court of the state is entitled to acceptance unless clearly not well founded. Jones vs. City of Portland, 245 U.S. 217, 221-222. These are manifestly matters with respect to which local authorities have peculiar facilities for securing accurate information. Jones vs. City of Portland, supra.

Under the authority of National Labor Relations Board vs. Jones and Laughlin, 301 U.S. 1, 42, the Supreme Court of the State of Florida in its decision took judicial notice of the activities of labor organizations and that "it would be difficult to name an organization that more vitally affects the public, or one in which the public is more vitally interested than the organizations of labor" (Record 24). This Court has recognized that the rights of employers and employees are subject to modification or qualification in the interests of the society in which they exist. Carpenters' and Joiners' Union vs. Ritters Cafe, 315 U.S. 722, 724. Finally on this subject we refer again to the above quoted statement of this Court in Thomas vs. Collins, supra, and

assume without question the right of the state in the exercise of its police power "to regulate labor unions with a view to protecting the public interest."

In essence, Section 4 of House Bill 142 creates a State Licensing Board composed of the Governor, Secretary of State, and State Superintendent of Public Instruction. All business agents for labor organizations must secure a license from the State Licensing Board by virtue of Section 9 (6), and as a prerequisite for securing such license an applicant must show: that he has been a citizen and resident of the United States for ten years next preceding the application, has not been convicted of a felony, and is of good character. The applicant must also show his authority for making application to represent his labor organization. For services rendered in issuing a license, the Board is authorized to charge a fee of One Dollar to defray cost of the service (Record 31).

The qualifications in Section 4 are the customary and traditional ones which legislatures usually prescribe to determine the fitness of licensees who seek to engage in professions or callings affecting the public welfare. Smith vs. Alabama, 124 U.S. 465. Petitioners have not charged these standards are unreasonable, nor have they been denied any rights because these standards have been invoked against them. The record shows that the controversy in the case at bar, insofar as Petitioner Hill is concerned, arose as result of Hill ignoring Section 9 (6) of House Bill 142 (Record 2), which section renders it unlawful for any person to act as a business agent without having obtained and possessing a valid license or permit. One object of this litigation is to compel him to comply with Section 9 (6) of said statute (Record 3). This is the matter for the consideration of the Court. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 746, 747.

Petitioners seek to justify the conduct of Petitioner Hill in ignoring Section 9 (6) on the ground House Bill 142 is unconstitutional because "there is still a discretion lodged in a majority of the Board to find the applicant qualified pursuant to the terms of the Act." In reply, it is urged that should any applicant be aggrieved by reason of denial of his application, he has recourse to writ of mandamus or other appropriate proceedings to review the Board's actions. See State ex rel Williams vs. Whitman, et. al. State Board of Dental Examiners, 116 Fla. 196, 156 So. 705.

Petitioners contend that House Bill 142 by licensing Petitioner Hill's occupation deprives him of his civil liberties. To this contention, the attention of the Court is directed to Section 2(2) of the Act which defines "business agent" when used in the Act to mean any person who shall for a pecuniary or financial consideration, act or attempt to act for any labor organization in (a) the issuance of membership or authorization cards, work permits or other evidence of rights granted or claimed in, or by, a labor organization or (b) in soliciting or receiving from any employer any right or privilege for employees. Clearly, the issuance of membership cards and work permits, and the act of soliciting or receiving rights from employers for employees, are occupational activities; and when it is considered the agent must be paid or salaried to come within the provisions of the Act, it is apparent the Act operated solely to regulate occupational activities as distinguished from civil liberties. These occupational activities are clearly to be distinguished from public or private speeches in solicitation of membership in a labor organization or other speeches, freedom of which is protected by the First Amendment. See Thomas vs. Collins, supra, wherein the Court stated in speaking of labor organizers:

> "Once the speaker goes further however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed . . . It would be free speech plus conduct akin to the activities which were present and which it was said the state might regulate in Schnieder v. State, supra (308 U.S. 147) and Cantwell vs. Connecticut, supra (310 U.S. 296)."

See also on this point, Gompers vs. Buck Stove & Range Co., 221 U.S. 418, 439, Schenck vs. U.S. 249 U.S. 47.

Much of the argument made in behalf of Section 4 of the Act applies with equal force to Section 6, which requires every labor organization in Florida to make a report in writing to the Secretary of State annually on or before July 1st. The requirements of this section of the law are simple and are found in the quoted section in a preceding part of this brief.

Section 6 is not a previous restraint in the organization or functioning of a labor union. A careful reading will disclose it does not interfere with the rights of individual members of unions to solicit others to join their organization nor limit the right of the union to solicit members, disseminate information about labor union matter, or peaceably to assemble or petition. The requirement of the filing of an annual report is not by statute made a condition precedent to the legal existence of a labor union or the exercise by it of the function of a labor union.

Since the report required of labor organizations by said Section 6 is so reasonable (a less onerous one is hardly conceivable) it appears the Petitioners contend for and seek a status of constitutional exclusion from state police power. This contention is answered by further reference to the

quoted utterance of this Court in Thomas vs. Collins, supra. Furthermore, we call the Court's attention to the fact that natural persons alone are entitled to the privileges and immunities which Section 1 of the 14th Amendment secures for citizens of the United States. Hague vs. C. I. O. 307 U.S. 496, 514.

We submit that activities sought to be regulated by Sections 4 and 6, House Bill No. 142, do not by analogy or otherwise come within the category of clergymen or the press; and Petitioners in placing their reliance upon cases involving religious activities or distribution of circulars are in direct conflict with the holding of this Court in Thomas vs. Collins, supra.

We contend, therefore, that the decisions upon which Petitioners rely are not applicable. Fiske vs. Kansas, 274 U.S. 380; Whitney vs. California, 274 U.S. 357; Herndon vs. Lowry, 301 U.S. 105, and DeJonge vs. Oregon, 299 U.S. 353, involve criminal proceedings charging criminal syndicalism under particular statutes and are in no way material to the case at bar. Hague vs. C. I. O., 307 U.S. 624; Schneider vs. New Jersey, 308 U.S. 147; Martin vs. City of Struthers, 319 U.S. 141; Lovell vs. City of Griffen, 303 U.S. 444; Near vs. Minnesota, 283 U.S. 697, and Thornhill vs. Alabama, 310 U.S. 88, were all directed at specific, singular statutes or ordinances which prohibited distribution of literature or public assembly or speaking without a permit, the issuance of which was in the absolute discretion of an administrative officer, or prohibiting the exercise of a civil right in its entirety. Grosjean vs. American Press Co., 297 U.S. 233; Follett vs. Town of McCormick, 321 U.S. 573, and Murdock vs. Pennsylvania, 319 U.S. 105, involved licensing tax and not a nominal fee to defray the cost of license and service as required in the statute under attack in the case at bar. West Virginia vs. Barnette, 319 U.S.

624, involved compulsory flag salute in public schools and is clearly not analagous for our purpose. State vs. Butterworth, 104 N.J. L. 549, involved only the meaning of "unlawful assembly" under a particular New Jersey statute and is not in point.

On the authority of the foregoing we submit that this Court has recognized that labor activities in this day are the proper field for valid exercise of the police power; and that Sections 4 and 6 of House Bill 142 in a mild and reasonable manner seek to regulate the activities contemplated by such sections without violence to any civil rights of Petitioners granted under the First Amendment to the United States Constitution.

II.

Petitioners' second question is as follows:

> "Do Section 4 and the injunction issued thereunder restrain or condition any rights granted Petitioner Hill by Congress under the National Labor Relations Act?"

The Court below answered this question in the negative.

The Court has definitely held that the National Labor Relations Act goes no further "than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer." National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 33. The Federal Act was not designed or intended to preclude a state from enacting legislation limited to the prohibition or regulation of the type of employee or union activity contemplated by House Bill 142. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 748, for indeed the authority of the Federal Government may not be pushed to such an extreme as to de-

stroy the distinction which the commerce clause, itself, establishes between commerce "among the several states" and the internal concerns of a state. If the contentions of the Petitioners were sound, that the National Labor Relations Act does preempt the field of labor activities and does foreclose all state action under the police power, the Federal Act would necessarilly fall by reason of the limitation upon the Federal power which inheres in the constitutional grant as well as because of the explicit reservation of the Tenth Amendment. National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 29, 30. Furthermore, this Court has long insisted that an intention of Congress to exclude states from exerting their police power must be clearly manifested. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 749. We feel that this question has been concluded by the Court in its recent decision, Thomas vs. Collins, decided January 8, 1945, October Term, 1944, No. 14. See also Wisconsin Labor Relations Board vs. Fred Rueping Leather Company, 248 Wis. 473, 279 N.W. 673; Fansteel Corporation vs. Amalgamated Iron, Steel and Tin Workers, 295 Ill. App. 325, 14 N. E. (2d) 991.

The determination of the National Labor Relations Board in the Matter of Eppinger & Russell Co., 56, N.L.R.B. No. 226, is immaterial in the consideration of the question whether Section 4 of House Bill 142 is in conflict with the National Labor Relations Act. Section 4 is a state regulation to be enforced by state officials. There is nothing in it that gives an employer the right to refuse to bargain or to otherwise comply with the National Labor Relations Act, or the Board's orders thereunder, because a business agent of the employees' union has not qualified under the State Act. For the aforesaid reason, the suggestion that the Board's determination in the Matter of Eppinger & Russell Co., decided anything concerning this question, is, in our opinion, erroneous.

In conclusion we wish to call the attention of the Court to the fact that the record fails to show any occasion in which the Petitioners have been denied any rights under the National Labor Relations Act, or that they are engaged in Interstate Commerce, and that Petitioners seek to bring to the attention of the Court an abstract question which this Court, we submit, will not anticipate, and which can be dealt with only as appropriately raised upon a record. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 746.

III.

Petitioners' third question is as follows:

> "Do Sections 4 and 6 of House Bill 142 discriminate as between the class of labor associations and employer associations in general, and within the class of labor organizations in particular, by the exemption under Section 15 of Associations of Railway Employees from the requirements of House Bill 142, thereby denying Petitioners equal protection of the laws?"

The Supreme Court of Florida answered this question in the negative.

Section 15 of Chapter 21968, Laws of Florida, Acts of 1943, which is attacked by the Petitioners in this question, reads as follows:

> "All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States."

In defining the limitations placed upon the Legislature by the equal protection clause of the Fourteenth Amendment to the United States Constitution, this Court has held that a state may classify with reference to the evil to be prevented and, if the class discriminated against is or rea-

sonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of absolute symmetry does not matter. It is not enough to invalidate the law that others may do the same thing and go unpunished if, as a matter of fact, it is found that the danger is characteristic of the class named. Pastone vs. Pennsylvania, 232 U.S. 138, 144; New York vs. Zimmerman, 278 U.S. 63, 73. The state may direct its law against what it terms the evil as it actually exists without covering the whole field of possible abuses. New York vs. Zimmerman, supra; Central Lumber Co. vs. South Dakota, 226 U.S. 157, 160. Nor is the Legislature bound to extend its regulation to all cases which it might possibly reach. Dealing with practical exigencies, the Legislature may be guided by experience. New York vs. Zimmerman, 278 U.S. 63, 74. It is established by repeated decisions that a statute aimed at what is deemed as evil and hitting it presumably where experience shows it to be most felt is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the Court can see. That is for the Legislature to judge, unless the case is very clear. Koekee Coke Co. vs. Taylor, 234 U.S. 224, 227. The law must be deemed by the Legislature coextensive with the practical needs. Koekee Coke Co. vs. Taylor, supra.

It is noted that Section 15 exempts from its provisions only those railway labor organizations and members which are regulated by any Act or Acts of Congress. A study of the Railway Labor Act, 455 Stat. 1185, 45 U.S.C.A. Secs. 151-188, will disclose, we submit, that it was the intent of Congress in a large part, if not entirely, to preempt the field covered by the salient features of the statute. We feel, therefore, that it is clear that the Legislature of the State of Florida concluded that the class of railway employees exempted by Section 15 was adequately regulated

by the Railway Labor Act and that it must be presumed that House Bill 142 is co-extensive with the practical need.

In conclusion, we wish to call the attention of the Court to its decision in National Labor Relations Board vs. Jones and Laughlin S. Corp., 301 U.S. 1, 46, wherein it was said: "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll vs. Greenwich Insurance Co., 199 U.S. 401, 411."

IV.

Petitioners' fourth question is as follows:

> "Is Section 2(2), containing the definition of 'Business Agent,' and upon which Section 4 is dependent for operation, so vague and indefinite as to fail to accord Petitioner Hill due process of law under the Fourteenth Amendment to the Federal Constitution?"

The Supreme Court of Florida apparently answered this question in the negative.

The definition of a "business agent" in Section 2 (2) is clear and unequivocal, and, we submit, that the definition is in exact accord with what everyone who has any knowledge of or dealings with labor union activities understands the term to mean, particularly labor union members.

In support of that statement, we humbly point out to the Court that the Supreme Court of Florida has considered cases involving the duties of business agents for labor organizations (Stanton vs. Harris, 152 Fla. 736, 13 So.

(2d) 17), and that the records of the Secretary of State of the State of Florida (of which the Supreme Court of Florida takes judicial notice) show that in the first year under the licensing law, 299 union business agents in Florida secured licenses. This is indicative of the fact that the term "business agent" as used in the Act was not so vague as to fail to give notice to this large number of Union officials that they should secure licenses, and that the term has a well understood meaning among unions. We find also that the Kansas legislature, in Senate Bill 264, Laws of 1943, Section 1, uses exactly the same definition of a business agent as is used in Section 2(2) of the Florida Act.

The requirement of reasonable certainty with which the Petitioners seek to assail Section 2(2) of House Bill 142, does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. Sproles vs. Binford, 386 U.S. 374, 393; Waters Pierce Oil Co. v. Texas, 212 U.S. 86; Nash v. United States, 229 U.S. 373, 377; Miller v. Strahl, 239 U.S. 426, 434; Omaechevarria v. Idaho, 246 U.S. 343, 348; Hygrade Provision Co. v. Sherman, 266 U.S. 497, 502; Bandini Petroleum Co. v. Superior Ct., 284 U.S. 8, 18.

CONCLUSION

We submit to the Court that Sections 4 and 6 do not interfere with Petitioners' freedom of speech, press or assembly, and that they are mild, modest and reasonable regulations within the police power of the state.

Section 4 and the injunction issued thereunder do not restrain or condition any rights granted Petitioner Hill by Congress under the National Labor Relations Act, the said section covers only a field left open to the states' regulation under their police power.

Sections 4 and 6 do not discriminate as between classes of labor associations, in favor of railway workers. The classification is reasonable and rational, and seeks by preventive means to regulate classes of labor which heretofore operated in secrecy and without responsibility.

The definition of "business agent" upon whom the Act places regulations, is clear and unequivocal, and when read in conjunction with the commonly accepted nomenclature of labor organizations, and the remainder of House Bill 142, it is without ambiguity.

Sections 4 and 6 are easily complied with by the unions and their business agents and are designed merely to secure some official identification of labor organizations and their agents, as well as to prohibit unfit and irresponsible individuals from acting as agents for the labor organizations in the State of Florida. These regulations carry no threat to civil rights or constitutional guaranties. They are wholesome, progressive measures in keeping with changed conditions, designed to insure in a small measure, honesty and fair dealing between the union agent and the members of the union, and prospective members thereof, and between the unions' representatives and members and the public.

We earnestly submit, that the unanimous decision of the Supreme Court of the State of Florida, upholding Sections 4 and 6 is free from error and that this frivolous proceeding should be thwarted in its outset by a denial of the Petition for issuance of a Writ of Certiorari to review the decision of the Supreme Court of the State of Florida.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1944

No. 811

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAM-FITTERS OF THE UNITED STATES AND CANADA, LOCAL NO. 234,

PETITIONERS,

vs.

STATE OF FLORIDA ex Rel.
J. TOM WATSON, Attorney General

On Writ of Certiorari to the Supreme Court of Florida

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida is reported in 19 So. (2d.) 857, and is found in the record herein on page 26.

STATEMENT OF THE CASE

Respondent accepts the Petitioners' Statement of the Case. Respondent deems it proper here to call to the attention of the Court the fact that the trial court in its final decree (Record 18) by authority of Section 16, Chapter 21968, Laws of Florida, Acts of 1943 (hereafter referred to as House Bill 142) judicially excised from Section 4 of the

act the words "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant," which final decree was affirmed by unanimous decision of the Supreme Court of Florida (Record 26).

STATE STATUTE INVOLVED

Sections 4 and 6 of House Bill 142 are directly involved in this proceedings. The determination of the validity of Sections 4 and 6 brings into consideration Sections 2(2), 9(6), 11, 14, 15 and 16 of the act. Attached to the Petition for Writ of Certiorari and Brief in support thereof, filed herein, as Appendix B thereof, is a copy of House Bill 142. For convenience here, copy of the title and Sections 1, 2, 4, 6, 9(6), 11, 14, 15 and 16 of the act is attached as an appendix hereto; and any reference in this brief to such sections of the act shall be understood to carry with it reference to the appendix hereto.

SUMMARY OF ARGUMENT

I.

Section 4 of House Bill 142 which requires a "business agent" of a labor organization to make application to and receive from the Licensing Board therein provided a license or permit, represents a lawful exercise of the police power of the State of Florida in its regulation of a business. The nature of the activities of such a business agent reasonably demands regulation. The requirements of Section 4, with respect to application for and issuance of such license or permit, are reasonable, and no appreciable discretion with respect thereto is lodged in said Licensing Board. Since the activities regulated are those related to the issuance of membership or authorization cards, work permits and any other evidence of rights granted or claimed

in, or by, a labor organization, and the soliciting or receiving from any employer any right or privilege for employees, there is no infringement of constitutional rights under the First and Fourteenth Amendments to the United States Constitution.

Section 6 which requires that every labor organization annually file with the Secretary of State its name, the location of its office, and the address of its president, secretary, treasurer and business agent, imposes no previous general restraint upon the right of working people to assemble and function through labor organizations. Labor organizations vitally affect the public, and their power and control reach into most phases of our life. The registration required is nothing beyond a mere identification requirement, is for the benefit of the public in general and the members of such organizations. Further, Section 11 of the act providing for suits by and against labor organizations and service of process upon them, is to be read in conjunction with Section 6. This latter section in no way interferes with the rights of members of a labor organization to solicit members, nor does it limit the right of the organization to solicit members, disseminate any information, peaceably to assemble and petition. The filing of the annual report is not by the act made a condition precedent to the existence or functioning of a labor organization.

II

The fact that Sections 4 and 6 are applicable only to labor organizations and not to associations of employers and other associations, and that there is exempted from the provisions of the act all railway labor organizations and members thereof as long as they are regulated by any act or acts of Congress, are not such as to render Sections 4 and 6 unlawfully discriminatory. A state may classify with reference to an evil to be prevented and, if the class

discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. The state may direct its law against that which it terms the evil as it actually exists without covering the whole field of possible abuses. Furthermore, it would seem that it was the intent of Congress in large part, if not entirely, by the Railway Labor Act, 455 Stat. 1185, 45 U.S.C.A., Secs. 151-188, to preempt the field covered by the salient provisions of the statute.

III

Sections 4 and 6 do not deprive Petitioners of any rights under the National Labor Relations Act. The Federal Act was not designed or intended to preclude a state from enacting legislation limited to the regulation of the type of union activities contemplated by House Bill 142. It would seem, further, that this question was concluded in the recent decision of this Court in the case of Thomas vs. Collins, decided January 8, 1945, October Term, 1944, No. 14.

IV

Section 4 is not so ambiguous as to deny due process of law. The definition of "business agent" in Section 2(2) of the act is clear and unequivocal, and, it is submitted, the definition is in exact accord with what everyone who has any knowledge of or dealings with labor union activities understands the term to mean, particularly labor union members.

ARGUMENT

I

Petitioners' First Specification of Error is as follows:

Sections 4 and 6 and the Injunctions Issued Thereunder Impose a Previous General Restraint Upon and Prohibit the Exercise of Civil Rights Granted Under the First Amendment and Protected Against Infringement By the State Under the Fourteenth Amendment.

A. GENERAL STATEMENT

The respondent maintains no error was committed by the Supreme Court of Florida in upholding the validity of Sections 4 and 6, as charged in the above specification of error.

The trial court and the Supreme Court of Florida found Sections 4 and 6 of House Bill 142 valid legislation, qualifying such finding, however, by deleting from Section 4 the following words: ". . . and are of the opinion that the public interest requires that a license or permit should be issued the applicant. . . ." The Supreme Court of Florida, in sustaining Sections 4 and 6, with the noted excision, premised such findings on the following statements in its opinion (Record 26):

> "Similar regulations (i.e., those required by Section 4) are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, nurses, beauty parlor operators, civil engineers, architects, liquor dealers and many others engaged in gainful occupations. All such requirements have been upheld in the interest of public health, morals, safety, welfare and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford. . . . Labor unions, like other trade, professional and business organizations, are concerned with the business of making a living. They do not bother themselves with the things that concern re-

> ligious bodies, chambers of commerce and like institutions. It is on this basis we say they are subject to police power. . . . The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

The theory found in the above utterances is the theory of this respondent; and to sustain such theory, this brief is addressed.

B. POLICE POWER OF THE STATES

The state under its police power has the right to regulate almost every type of enterprise, trade, occupation and profession in order to protect the public health, welfare and morals. Gundling vs. Chicago, 177 U.S. 183, 188; Watson vs. Maryland, 218 U.S. 173, 176; Sligh vs. Kirkwood, 237 U.S. 52, 59; Eubanks vs. Richmond, 226 U.S. 137, 142; Schmidinger vs. Chicago, 226 U.S. 578, 587; Camfield vs. U.S., 167 U.S. 518, 524; State vs. Lawrence, 213 N.C. 674, 197 S.E. 586, Certiorari denied 305 U.S. 638. For exercise of this right as related to voluntary associations, see New York vs. Zimmerman, 278 U.S. 63, 71, 72; and also as related to local problems thrown up by modern industry, see American Federation of Labor vs. Swing, 312 U.S. 321, 325; Borden, et al., vs. Sparks, 54 Fed. Supp. 300.

C. POWER AND DUTY OF THE STATE

The state is primarily the judge of regulations required in the interest of public safety and welfare. Graves vs. Minnesota, 272 U.S. 425, 428; Gitlow vs. N.Y., 268 U.S. 652, 668. The discretion of the legislature is very large in the exercise of the police power, both in determining what the public interests require, and measures and means necessary

to protect such interests. Louisville & Nashville R. Co. vs. Kentucky, 161 U.S. 677, 701; Sterling vs. Constantin, 287 U.S. 378, 398-399. The judgment of the highest court in the state is entitled to acceptance unless clearly not well founded. Jones vs. City of Portland, 245 U.S. 217, 221, 222. These are manifestly matters with respect to which local authorities have peculiar facilities for securing accurate information. Jones vs. City of Portland, supra.

Under the authority of National Labor Relations Board vs. Jones, 301 U.S. 1, the Supreme Court of the State of Florida took judicial notice of the activities of labor unions and that "it would be difficult to name an organization that more vitally affects the public, or one in which the public is more vitally interested" (Record 29).

In line with the above decision of the Florida Court, it should not be forgotten that labor unions are autonomies whose powers and controls are great. Those powers and controls now reach into most phases of our economic life. Many working men in order to follow their trades and crafts and earn a livelihood, find it expedient, desirable, or necessary to join a union. Under the Wagner Act and the extending administrative policies and powers of the National Labor Relations Board, many employers have no choice except to deal with the unions and their representatives. The economic contests between employer and employees have never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. We must be mindful, therefore, that the rights of employers and employees to conduct their economic affairs and to compete with others in the share of products of industry are subject to modification or qualification in the interests of the society in which they exist. Carpenters' and Joiners' Union vs. Ritters Cafe, 315 U.S. 722, 724.

Florida is not by any means the only state that is undertaking to regulate labor unions by state legislation,

as witness the following from the opinion of the Supreme Court of Florida (Record 30): " . . . our attention is directed to acts by at least eleven other states, Alabama, Kansas, Arkansas, Wisconsin, South Dakota, Idaho, Texas, Michigan, Pennsylvania, Massachusetts and Minnesota regulating some phase of labor relations."

Such concerted action evidences a deep-seated conviction as to the need for regulation in this field and as to the means to be adopted to meet such need. Such legislative response urges the conviction that these regulations cannot be regarded as arbitrary or capricious; and the legislature is entitled to its judgment. West Coast Hotel Company vs. Parrish, 300 U.S. 379, 399; Tigner vs. Texas, 310 U.S. 141, 145-146.

D. SECTION 4 IS A VALID REGULATION OF THE ACTIVITIES OF A "BUSINESS AGENT" OF A LABOR ORGANIZATION

Attention is directed to the definition of the term "business agent" and the activities to bring one within such term, as set forth in Section 2(2) of the act. Such section provides that the term "business agent," when used in the act, shall mean any person "who shall for a *pecuniary or financial consideration* act or attempt to act for any labor organization in (a) the *issuance* of membership or authorization cards, work permits or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in *soliciting* or *receiving from any employer* any right or privilege *for employees*."

We agree with Petitioners that the activities mentioned in the preceding paragraph are not limited to the solicitation of funds. We submit, however, that labor organizations, their formation and operation, and admission to membership therein, inevitably contemplate that when membership or authorization cards or work permits are issued, the recipient thereof shall immediately or mediately

be required to pay initiation or other fees. Moreover, there is involved in these activities the exercise of authority and power by a "business agent" which transcend any mere collection of money. Such activities involve the desire of persons to work as members of labor unions, and whose right to thus work, and oftentimes to work at all, is dependent upon a "business agent" exercising his authority to issue, withhold, or condition the issuance, of authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor union. The right of members of a labor organization to bargain with their employer in relation to conditions of work, hours, wages and settlement of grievances is recognized; and the utmost of good faith is required of a "business agent" who assumes to solicit or receive from an employer such rights and privileges. The power and authority which might be exercised by a "business agent" with respect to these rights are evident. The damages which reasonably might be suffered by those who would work as members of a labor union as result of coercion, venality or bad faith of a "business agent" requires no strain of the imagination or elaboration; and it is no argument that such a "business agent" is supposed to function only as authorized by the organization he represents.

Florida has lawfully exercised its police power to regulate those engaged in numerous businesses and pursuits, among whom are lawyers, accountants and insurance agents. The opportunity for fraud or bad faith, and resulting injuries on the part of an unscrupulous "business agent" with respect to those he would serve or represent and the public in general, is at least on a parity with the incidence of injuries occasioned by the fraud or bad faith of an unscrupulous lawyer, accountant, or insurance agent; and it is apparent a "business agent" is afforded more opportunity to exercise coercion than is afforded a lawyer, an accountant or an insurance agent.

These facts, together with the mentioned intimate relationship of labor organizations to the public welfare, were obvious to the Florida Legislature when it enacted House Bill 142. Section 4 thereof creates a State Licensing Board composed of the Governor, Secretary of State and Superintendent of Public Instruction. Business agents of labor organizations must secure a license or permit from this board by virtue of Section 9(6) of the act, and as a prerequisite to securing said license the applicant must show: that he has been a citizen and resident of the United States for ten years, has not been convicted of a felony, and is of good character. The applicant must also show his authority for making application to represent his labor organization. For service rendered in issuing a license or permit, the board is authorized to charge a fee of $1.00 to defray the cost of the service.

Petitioners have not charged these standards are unreasonable; nor have they been denied any rights because these standards have been invoked against them. The record shows that the controversy in the case, in so far as Petitioner Hill is concerned, arose as result of such Petitioner ignoring said Section 9(6), which section renders it unlawful for any person to act as a business agent without having obtained a valid license or permit. Petitioners seek to justify the conduct of Petitioner Hill in ignoring Section 9(6) on the ground that said Section 4 is unconstitutional. Particularly as to this specification of error, their contentions are summarized as follows: (1) That Section 4 and the injunction issued thereunder deprive Hill of his "general right to solicit employees to join a labor organization"; (2) That Section 4 is a licensing statute, as distinguished from a mere identification requirement, vesting in the Licensing Board discretion unduly impairing Hill's civil rights; and (3) That there exists a difference between commercial solicitation and solicitation to join a lawful

movement, which latter right cannot be granted or withheld by the state.

Of the decisions cited by Petitioners in support of these contentions, attention is first directed to the recent case of Thomas vs. Collins, decided by this Court on January 8, 1945, October Term 1944, No. 14, and certain statements therein:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or idenfication requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present and which it was said the state might regulate in Schneider vs. State, supra, and Cantwell vs. Connecticut, supra."

"The present application does not involve the solicitation of money or property." (Main opinion.)

> "No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment." (Concurring opinion of Justice Douglas).

> "So the state to an extent not necessary now to determine may regulate one who makes a business or livelihood of soliciting funds or memberships for unions." (Concurring opinion of Justice Jackson).

The activities of a "business agent" as defined in House Bill 142 are not the activities of one who, as incidents to his exercise of his right of freedom of speech and assembly, solicits funds or takes subscriptions. They are not activities comparable to the distribution of religious or other literature. There is no relationship between these activities and rights involved in freedom of the press. Clearly

the *issuance* of membership or authorization cards, work permits and the rights granted or claimed in or by a labor organization, and the *soliciting* or *receiving of rights* from employers for employees, constitute *occupational activities* which the state in a valid exercise of its police power can regulate in a reasonable manner. Further, when it is considered that such "business agent" must be paid or salaried to come within the provisions of Section 4, it is apparent the statute operates solely to regulate occupational activities as distinguished from civil liberties; and any relationship such activities may have to freedom of speech, press and assembly is remote. Moreover, by no rule of statutory construction can Section 4 be construed to license or regulate one who, whether for compensation or not, solicits membership in any labor organization, by public speeches, private conferences, or in any other manner. We contend, also that the injunction issued by the trial court (Record 18) and affirmed by the Supreme Court of Florida (Record 26-35) in no way limits the right of Petitioner Hill to continue to solicit members for Local No. 234, or any other labor organization in the State of Florida.

If the activities contemplated by Section 4 are susceptible of regulation, and we submit they are, the requirements of Section 4 relative to issuance of license or permit are not unreasonable. With the excision of the part of this section noted, the requirements of the section are reasonable. Certainly there is nothing in this record to indicate arbitrary action of the Licensing Board. A mere registration for purposes of identification would not meet the requirements of the regulation demanded; for there is presented here the opportunity of a man "to use the economic power which he has over other men and their jobs." Thomas vs. Collins, supra. Further, the constitutional guaranty of free speech does not protect a man from an injunction against uttering words that may have all the effect of force. Gompers vs. Buck Stove & Range Co., 221 U.S.

418, 439; Schenck vs. U.S., 349 U.S. 47; Near vs. Minn., 283 U.S. 697, 716.

In view of the above, we contend that the other decisions upon which Petitioners rely are not applicable. Fiske vs. Kansas, 274 U.S. 380, and Herndon vs. Lowry, 301 U.S. 105, have no relationship to this case, dealing with insufficiency of evidence to support convictions under criminal statutes. Hague vs. C.I.O., 307 U.S. 495; Schneider vs. New Jersey, 308 U.S. 147; and Martin vs. City of Struthers, 319 U.S. 141, were all directed at specific, singular statutes or ordinances which prohibited distribution of literature or public assembly or speaking without a permit, issuance of which was in the *absolute discretion* of an administrative officer, *or prohibiting* the exercise of a civil right *in its entirety*. Follette vs. Town of McComick, 321 U.S. 573, and Murdock vs. Pennsylvania, 319 U.S. 105, involved a *licensing* tax and *not a nominal fee* to defray cost of license and service as required in the statute under attack in the case at bar. Near vs. Minnesota, 283 U.S. 697, related to the validity of a statue providing for abatement of publications regularly or customarily dealing in scandalous and defamatory matter.

On the authority of the foregoing, we submit that the Supreme Court of Florida did not err in holding that Section 4 (with noted excision) is a valid exercise of state police power.

E. SECTION 6 IS A VALID PROVISION OF LAW

Section 6 of House Bill 142 requires every labor organization operating in Florida to make a report in writing to the Secretary of State annually on or before July 1st showing: (1) The name of the labor organization; (2) The location of its office, and (3) The name and address of the president, secretary, treasurer and business agent.

Much of the argument made in behalf of Section 4 applies with equal force to Section 6. It seems settled that voluntary associations and corporations, either for or not for profit, may be required to furnish official information as to their identity in order that the public may have access to the same for many purposes. New York vs. Zimmerman, 278 U.S. 63.

Attention is directed to the fact that the requirements of Section 6 are reasonably related to the requirements of Section 4. One requirement of the latter section is that the application for license or permit shall be accompanied by a statement signed by the president and secretary of the labor organization for which applicant proposes to act as business agent. Section 6 provides a public file of all such organizations functioning in the state.

The requirements of Section 6 are reasonably related to Section 11 of the act. This latter section provides for suits by and against labor organizations, and specifies how service of process may be made on such an organization. The public record setting forth the name of the organization, its officers and business agents is reasonably designed and required to facilitate the exercise of rights under Section 11. Not the least of the reasons for the requirement that a voluntary association shall identify itself in the manner provided by Section 6 is to facilitate legal proceedings against it by persons aggrieved. New York vs. Zimmerman, supra. By analogy, reference is here made to the requirements that each corporation in Florida, domestic or foreign, must maintain in the office of Secretary of State of Florida designation of place for service of process upon it, and designation of agent upon whom service shall be made (Sections 47.34-47.36, Florida Statutes 1941), and to penalties for failure to comply with such requirements (Section 47.43, Florida statutes 1941). It is further noted that Section 11 of House Bill 142 is the only law in Florida dealing with service of process upon labor unions.

That the regulation is a reasonable one in light of the foregoing is evident; and it is further noted that Congress, in Section 112 of the Revenue Act of 1943, inserted a provision that labor organizations, although exempt from income tax, should file annual report with the Commissioner of Internal Revenue, disclosing items of gross income, receipts and disbursements, and such other information for the purpose of carrying out the provisions of that act, as the Commissioner may by regulation prescribe. Petitioners seek to distinguish between this Federal act and the requirements of Section 6:

> "Further, the difference between the effect of failure to comply with Section 6 of the Florida Act and failure to comply with the Revenue Act of 1943, Title 1, Section 1, 17(a), 58 Stat. 36, 26 U.S.C. 54(f), requiring labor organizations to file certain statements in respect to their income, should be noted. Failure to file under the Federal Act merely imposes penalties upon those individuals responsible for the filing (53 Stat. 28, 26 U.S.C. 54(a)(b)(d), and 53 Stat. 62, 26 U.S.C. 145); it does not operate as a forfeit of all rights of the membership to meet and to engage in discussion and dissemination of information for their economic protection and advancement as does the Florida Act."

The enforcement feature of the Federal Act is a penalty provision; the enforcement feature of the Florida Act is a penalty provision. The Florida Act has no provision for the injunctive proceedings pursued. An analysis of Petitioners' above argument and its implications, leads one to believe it is not made seriously. The fact that injunctive proceedings were here pursued has nothing to do with the similar character of the acts.

Section 6 imposes no previous restraint on the organization and functioning of a labor union. A careful reading will disclose it does not interfere with rights of individual members of unions to solicit others to join their organization nor limit the right of the union to solicit members, disseminate information about labor union matters, or

peaceably to assemble or petition. The requirement of the filing of an annual report is not by statute made a condition precedent to the legal existence of a labor union or to the exercise by it of the function of a labor union.

Reference is made in Petitioners' brief to pages 27-39 of brief filed in American State Federation of Labor vs. McAdory, et al, No. 588, October Term, 1944, by petitioners therein, in support of their contention that Section 6 operates to restrain and condition, and as applied in the present case to prevent, the exercise of Local No. 234 and Petitioner Hill of their civil rights. Such portion of brief in Case No. 588 is directed to Section 7 of the Alabama Bradford Act, containing provisions dissimilar to Section 6 of the Florida Act. A study of such pages, however, after deleting particular references to the specific provisions of the Bradford Act, has been made.

Petitioners contend that the effect of Section 6 and the injunction issued thereunder is to proscribe the functioning of Local No. 234, and thus deprives such union and the members thereof of their constitutional civil rights.

The cases cited by Petitioners in support of this contention deal with situations not similar at all to the instant case, enunciating principles of freedom of speech, press and assembly not to be contested in their particular applications. These cited cases are dealt with. Thomas vs. Collins, supra, is discussed below. The other cases cited are: Whitney vs. California, 274 U.S. 357; DeJonge vs. Oregon, 299 U.S. 353, and Herndon vs. Lowry, 301 U.S. 105, dealt with prosecutions under criminal syndicalism statutes. Murdock vs. Pennsylvania, 319 U.S. 105; Follette vs. Town of McCormick, 64 S. Ct. 717; Valentine vs. Christenson, 316 U.S. 52; Schneider vs. New Jersey, 308 U.S. 147; Lovell vs. Griffin, 303 U.S. 44; Thornhill vs. Alabama, 310 U.S. 88, and Hague vs. C.I.O., 307 U.S. 624, as employed under this contention of Petitioners were all directed at singular, specific statutes or ordinances which prohibited distribu-

tion of literature or public assembly or speaking without a permit, issuance of which was in the absolute discretion of an administrative officer or prohibited the exercise of a civil right in its entirety. West Virginia vs. Barnette, 319 U.S. 624, involved compulsory flag salute in a public school. State vs. Butterworth, 104 N.J.L. 549, involved only the meaning of an unlawful assembly under a particular New Jersey statute not in point.

The other case cited by Petitioners in support of this contention is Thomas vs. Collins, supra. Petitioners quote from this case, as follows:

> "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assembiles, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

This statement of the Court must be read in its setting. The point in Thomas vs. Collins involved the right of a labor union organizer, as defined in the Texas statute under consideration, to solicit membership in a labor union, without having previously obtained an organizer's card as required by the statute. The case and the application are not in point.

Petitioners further urge that Section 6, as applied in the present case involves a great deal more than mere registration; that it has been utilized as a device for complete prohibition against the exercise of civil rights by requiring compliance with Section 6 as a condition of such exercise and making such condition foundation for the blanket in-

junction imposed upon Local No. 234. They quote further from Thomas vs. Collins as follows:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order."

If the requirements of Section 6 amount to mere registration or identification, which we contend is true, certainly the character of the requirement of the law is not changed by the injunction issued thereunder.

Petitioners further contend that the state cannot restrict or previously restrain the exercise of the right of assembly of Local No. 234, as by the requirement of a license or exaction of a fee for the privilege, and that requirements of Section 6 constitute the equivalent of a license. Cases cited by Petitioners in support of this contention are: Lovell vs. Griffin, supra; Schneider vs. State, supra; Murdock vs. Pennsylvania, supra; all of which in this connection, dealt with imposition of a *license tax* as a prerequisite to exercising civil rights as heretofore indicated. Thornhill vs. Alabama dealt with a statute in its application to picketing. Crutch vs. Kentucky, 141 U.S. 47, and International Text Book Co. vs. Pigg, 217 U.S. 106, involved state requirements colliding with interstate commerce. Section 6 does not contemplate registration or identification as a condition to the exercise of freedom of speech or assembly; and for the further reasons set forth below the above law is not applicable to the instant case.

First, the registration requirement of Section 6 is not burdensome, but most simple in its requirements. As heretofore asserted, it is a valid regulatory measure of the state. Further, such identification requirements are not

tantamount to requirement of a license. The one dollar fee is not a *license tax*. The Supreme Court of Florida in its opinion recognized that this nominal fee is nothing more than a charge to defray cost of the service. This Court has held in several cases that a distinction is to be made between a *license tax* and a *nominal fee imposed* as a regulatory measure to defray reasonable cost in connection with the matter sought to be regulated. Attention is directed to the following excerpt from Murdock vs. Pennsylvania, supra, (page 113-114 of text):

> "The power to impose a license tax on the exercise of the freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. Lovell vs. Griffin, 303 US 444, 82 L. ed. 949, 58 S. Ct. 666; Schneider v. Irvington, 308 US 147, 84 L. ed 155, 60 S. Ct. 146, supra; Cantwell v. Connecticut, 310 US 296, 306, 84 L ed 1213, 1219, 60 S. Ct. 900, 128 ALR 1352; Largent v. Texas, 318 US 418, ante, 873, 63 S. Ct. 667; Jamison v. Texas, 318 US 413, ante, 869, 63 S. Ct. 779, supra. It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 US pp. 607-609, 620, 623, 86 L ed 1706, 1707, 1713, 1715, 62 S Ct. 1231, 141 ALR 514. In that case as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question."

and the following footnote in connection therewith:

> "The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Coal

Min. Co. supra (309 US pp. 56-58, 84 L ed 576, 777, 60 S Ct 388, 128 ALR 876), it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce. 'So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress they are not forbidden.' Clyde Mallory Lines v. Alabama, 296 US 261, 267, 80 L ed 215, 219, 56 S Ct 194, and cases cited. And see South Carolina State Highway Dept. v. Barnwell Bros. 303 US 177, 185-188, 82 L ed 734, 738-740, 58 S Ct 510."

Since neither the requirements of Section 6 nor the one dollar charge are unreasonable, certainly the argument that a "license" or a "license tax" is involved is not tenable. Since such registration or identification required by Section 6 is so reasonable it appears Petitioners contend for and seek a status of constitutional exclusion from state police power.

> "That the State has the power to regulate labor unions with a view to protecting the public interest is . . . hardly to be doubted." Thomas vs. Collins, supra.

For the reasons stated, respondent contends the Supreme Court of Florida properly held that Section 6 was a valid regulatory measure of the state under its police power.

F. SECTIONS 4 AND 6 AND THE FIRST AMENDMENT

Should it be found by the Court that the civil rights protected by the First Amendment have as their concomitants the whole field of operation of labor organizations and their agents as contended by Petitioners, respondent submits that even in that event, such civil rights of necessity must yield to the requirements of Sections 4 and 6. The state under its police power may enact laws which interfere indirectly and to a limited extent with the right of

speech or liberty of the people where they are reasonably necessary for the protection of the general public. See Cox vs. New Hampshire, 312 U.S. 569, 576-577; Carpenters and Joiners Union vs. Ritters Cafe, 315 U.S. 722, 725-726; Cantwell vs. Connecticut, 310 U.S. 296, 306; Jamison vs. Texas, 318 U.S. 413, 417; Valentine vs. Christensen, 316 U.S. 52; Jones vs. Opelika, 316 U.S. 584, 593, 596. See also City of Manchester vs. Leiby, 117 Fed. (2d) 661, certiorari denied, 315 U.S. 562; New York vs. Zimmerman, 278 U.S. 63.

II

Petitioners' Second Specification of Error is as follows:

Sections 4 and 6 Deny Petitioners Equal Protection of the Laws in Violation of the Fourteenth Amendment.

We maintain the Supreme Court of Florida properly found Sections 4 and 6 not in contravention of the Fourteenth Amendment of the United States Constitution.

This involves Section 15 of House Bill 142 which is as follows:

> "All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States."

Also involved is the further contention of Petitioners that the act is not applicable also to associations of employers or other associations.

In defining the limitations placed upon the Legislature by the equal protection clause of the Fourteenth Amendment to the United States Constitution, this Court has held that a state may classify with reference to the evil to be prevented and, if the class discriminated against is or reasonably might be considered to define those from whom the

evil mainly is to be feared, it properly may be picked out. A lack of absolute symmetry does not matter. It is not enough to invalidate the law that others may do the same thing and go unpunished if, as a matter of fact, it is found that the danger is characteristic of the class named. Pastone vs. Pennsylvania, 232 U.S. 138, 144; New York vs. Zimmerman, 278 U.S. 63, 73. The state may direct its law against what it terms the evil as it actually exists without covering the whole field of possible abuses. New York vs. Zimmerman, supra; Central Lumber Co. vs. South Dakota, 226 U.S. 157, 160. Nor is the Legislature bound to extend its regulation to all cases which it might possibly reach. Dealing with practical exigencies, the Legislature may be guided by experience. New York vs. Zimmerman, 278 U.S. 63, 74. It is established by repeated decisions that a statute aimed at what is deemed as evil and hitting it presumably where experience shows it to be most felt is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the Court can see. That is for the Legislature to judge, unless the case in very clear. Koekee Coke Co. vs. Taylor, 234 U.S. 224, 227. The law must be deemed by the Legislature coextensive with the practical needs. Koekee Coke Co. vs. Taylor, supra.

It is noted that Section 15 exempts from its provisions only those railway labor organizations and members which are regulated by any Act or Acts of Congress. A study of the Railway Labor Act, 455 Stat. 1185, 45 U.S.C.A., Secs. 151-188, will disclose, we submit, that it was the intent of Congress in a large part, if not entirely, to preempt the field covered by the salient features of the statute. We feel, therefore, that it is clear that the Legislature of the State of Florida concluded that the class of railway employees exempted by Section 15 was adequately regulated by the Railway Labor Act and that it must be presumed that House Bill 142 is co-extensive with the practical need.

In conclusion, we wish to call the attention of the Court to its decision in National Labor Relations Board vs. Jones and Laughlin S. Corp., 301 U.S. 1, 46, wherein it was said: "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll vs. Greenwich Insurance Co., 199 U.S. 401, 411."

III

Petitioners' Third Specification of Error is as follows:

Sections 4 and 6 and the Injunction Issued Thereunder Deprive Petitioners of Rights Granted and Protected Under the National Labor Relations Act in Violation of Article VI of the United States Constitution.

We maintain the Supreme Court of Florida properly found that Sections 4 and 6 of House Bill 142 and the injunctions issued thereunder do not deprive Petitioners of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

The Court has definitely held that the National Labor Relations Act goes no further "than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer." National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 33. The Federal Act was not designed or intended to preclude a state from enacting legislation limited to the prohibition or regulation of the type of employee or union activity contemplated by House Bill

142, Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 748, for indeed the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause, itself, establishes between commerce "among the several states" and the internal concerns of a state. If the contentions of the Petitioners were sound, that the National Labor Relations Act does preempt the field of labor activities and does foreclose all state action under the police power, the Federal Act would necessarily fall by reason of the limitation upon the Federal power which inheres in the constitutional grant as well as because of the explicit reservation of the Tenth Amendment. National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 29, 30. Furthermore, this Court has long insisted that an intention of Congress to exclude states from exerting their police power must be clearly manifested. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 749. We feel that this question has been concluded by the Court in its recent decision, Thomas vs. Collins, decided January 8, 1945, October Term, 1944, No. 14. See also Wisconsin Labor Relations Board vs. Fred Rueping Leather Company, 248 Wis. 473, 279 N.W. 673; Fansteel Corporation vs. Amalgamated Iron, Steel and Tin Workers, 295 Ill. App. 323, 14 N.E. (2d) 991.

The determination of the National Labor Relations Board in the Matter of Eppinger & Russell Co., 56, N.L.R.B. No. 226, is immaterial in the consideration of the question whether Section 4 of House Bill 142 is in conflict with the National Labor Relations Act. Section 4 is a state regulation to be enforced by state officials. There is nothing in it that gives an employer the right to refuse to bargain or to otherwise comply with the National Labor Relations Act, or the Board's orders thereunder, because a business agent of the employees' union has not qualified under the State Act. For the aforesaid reason, the suggestion that the Board's determination in the Matter of Eppinger & Russell

Co., decided anything concerning this question, is, in our opinion, erroneous.

In conclusion, we wish to call the attention of the Court to the fact that the record fails to show any occasion in which the Petitioners have been denied any rights under the National Labor Relations Act, or that they are engaged in Interstate Commerce,* and that Petitioners seek to bring to the attention of the Court an abstract question which this Court, we submit, will not anticipate, and which can be dealt with only as appropriately raised upon a record. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 746.

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* Attention is directed to footnote 3, page 38, Petitioners' Brief. A ground of Petitioners' motion to dismiss in the trial court to the effect that House Bill 142 is in conflict with the National Labor Relations Act (Record 9-10), could hardly be accepted under the stipulation (Record 17) as *proof* that members of Local No. 234 were engaged in interstate commerce. There is no allegation in Petitioners' answer in the trial court (Record 4-8) to the effect that members of Local No. 234 are engaged in interstate commerce. This is not a declaratory judgment suit; it is an injunction proceeding.

IV

Petitioners' Fourth Specification of Error is as follows:

Section 2(2), Upon Which Section 4 Is Dependent for Operation, Is So Ambiguous as to Deny Due Process of Law.

The definition of a "business agent" in Section 2(2) is clear and unequivocal, and, we submit, that the definition is in exact accord with what everyone who has any knowledge of or dealings with labor union activities understands the term to mean, particularly labor union members.

In support of that statement, we point out to the Court that the Supreme Court of Florida has considered cases

involving the duties of business agents for labor organizations (Stanton vs. Harris, 152 Fla. 736, 13 So. (2d) 17), and that the records of the Secretary of State of the State of Florida (of which the Supreme Court of Florida takes judicial notice) show that in the first year under the licensing law, 299 union business agents in Florida secured licenses. This is indicative of the fact that the term "business agent" as used in the Act was not so vague as to fail to give notice to this large number of union officials that they should secure licenses, and that the term has a well understood meaning among unions. We find also that the Kansas legislature, in Senate Bill 264, Laws of 1943, Section 1, uses the same definition of a business agent as is used in Section 2(2) of the Florida Act.

The requirement of reasonable certainty with which the Petitioners seek to assail Section 2(2) of House Bill 142, does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. Sproles vs. Binford, 386 U.S. 374, 393; Waters Pierce Oil Co. vs. Texas, 212 U.S. 86; Nash vs. United States, 229 U.S. 373, 377; Miller vs. Strahl, 239 U.S. 426, 434; Omaechevarria vs. Idaho, 246 U.S. 343, 348; Hygrade Provision Co. vs. Sherman, 266 U.S. 497, 502; Bandini Petroleum Co. vs. Superior Ct., 284 U.S. 8, 18.

CONCLUSION

We submit to the Court that Sections 4 and 6 do not interfere with Petitioners' freedom of speech, press or assembly, and that they are mild, modest and reasonable regulations within the police power of the state.

Sections 4 and 6 and the injunctions issued thereunder do not restrain or condition any rights granted Petitioners by Congress under the National Labor Relations Act, the said sections cover only a field left open to the states' regulation under their police power.

Sections 4 and 6 do not discriminate as between classes of labor associations, in favor of railway workers, employer associations or other associations. The classification is reasonable and rational, and seeks by preventive means to regulate classes of labor which heretofore operated in secrecy and without responsibility.

The definition of "business agent" upon whom the Act places regulations, is clear and unequivocal, and when read in connection with the commonly accepted nomenclature of labor organizations, and the remainder of House Bill 142, it is without ambiguity.

Sections 4 and 6 are easily complied with by the unions and their business agents and are designed merely to secure some official identification of labor organizations and their agents, as well as to prohibit unfit and irresponsible individuals from acting as agents for the labor organizations in the State of Florida. These regulations carry no threat to civil rights or constitutional guaranties. They are wholesome, progressive measures in keeping with changed conditions, designed to insure in a small measure, honesty and fair dealing between the union agent and the members of the union, and prospective members thereof, and between the unions' representatives and members and the public.

We earnestly submit, that the unanimous decision of the Supreme Court of the State of Florida, upholding Sections 4 and 6 is free from error and that accordingly the decision of said Court should be affirmed.

Respectfully submitted,

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APPENDIX

CHAPTER 21968—(No. 334).

HOUSE BILL NO. 142

AN ACT to Regulate the Activities and Affairs of Labor Unions, Their Officers, Agents, Members, Organizers, and Other Representatives; Making Provision for Suits and Process By and Against the Same; Requiring Certain Fees; Declaring Certain Public Policy of the State; Giving Certain Definitions and Recognizing Certain Rights as Belonging to Employees; Exempting Certain Labor Organizations from its Provisions; Providing Certain Penalties and Punishment for Violations; With a Saving Clause in Case of Unconstitutionality; and Repealing All Laws and Parts of Laws in Conflict Herewith.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof hav-

ing within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

. . . . . .

Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority so to do. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty-day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all

information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act *and are of the opinion that the public interest requires that a license or permit should be issued to such applicant,** then the Board shall be resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

. . . . . .

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;

(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

. . . . . .

Section 9. It shall be unlawful for any person: . . .

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* The Courts below judicially excised this italicized portion of House Bill 142.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

. . . . . .

Section 11. Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this State. All process, pleadings, and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

. . . . . .

Section 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

Section 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1944

No. 811

LEO M. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

v.

STATE OF FLORIDA EX REL. J. TOM WATSON, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF IN SUPPORT THEREOF

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
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Of the New York Bar,
Of Counsel.

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Petitioners,

v.

STATE OF FLORIDA *ex rel.* J. TOM WATSON, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

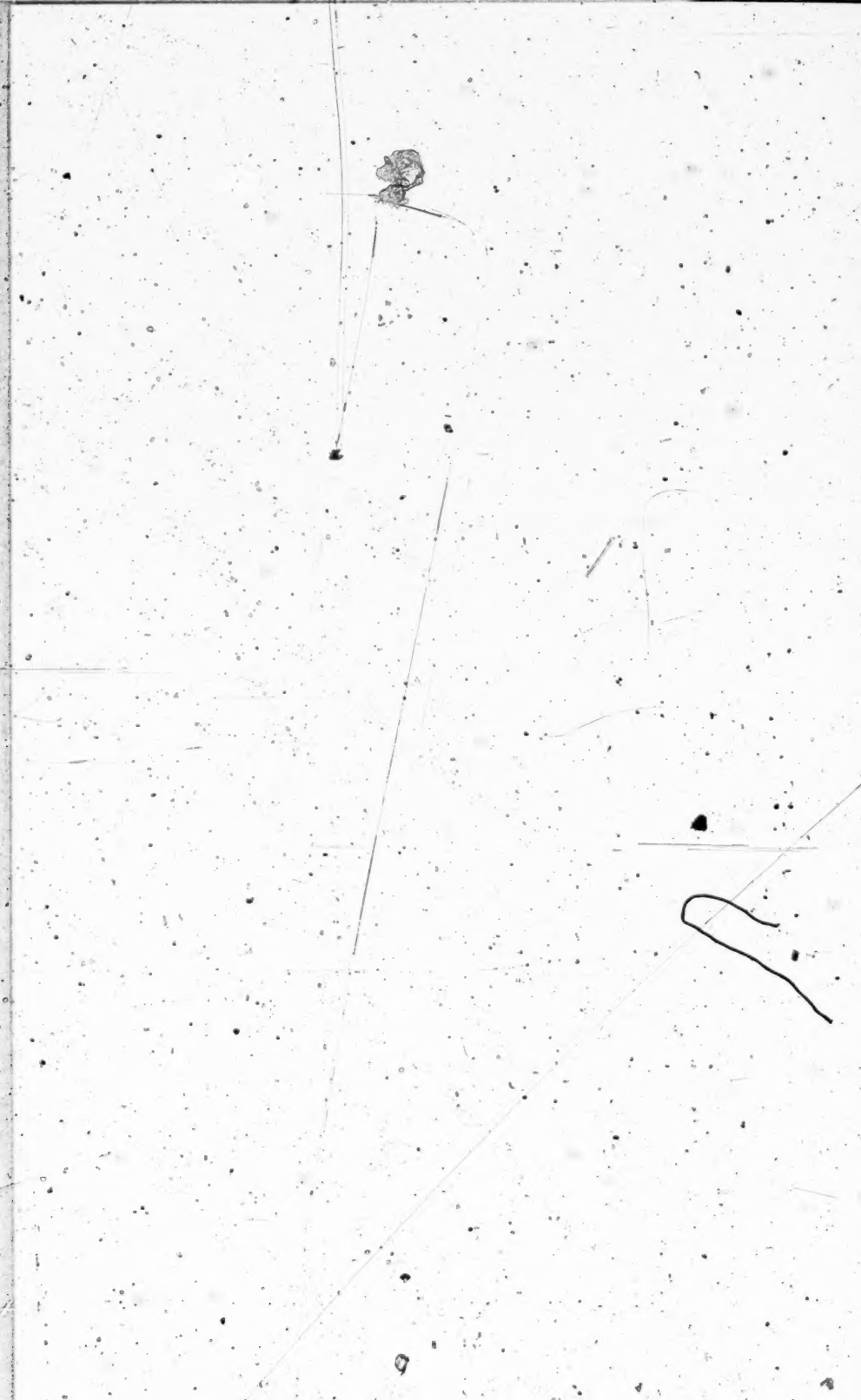
Motion for Leave to File Brief as *Amicus Curiae*

May it Please the Court.

The undersigned as counsel for the American Civil Liberties Union, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *Amicus Curiae*. The consent of the attorney for the petitioners to the filing of this brief has been obtained. Counsel for respondent has refused to grant his consent. Special reasons in support of this motion are set out in the accompanying brief.

March 26, 1945.

ARTHUR GARFIELD HAYS,
Counsel for American Civil Liberties Union, Amicus Curiae.



Supreme Court of the United States

OCTOBER TERM, 1944

No. 811

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Petitioners,

v.

STATE OF FLORIDA *ex rel.* J. TOM WATSON, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Statement

The American Civil Liberties Union is a national organization devoted to the protection of civil liberties in general and of the Federal and several State Bill of Rights in particular. It has members who reside in and are citizens of the various States, including the State of Florida. The organization endeavors to defend civil liberties from the viewpoint of the general public. It does not express the views of any particular group of class, political, economic, social or religious. It has come to the aid

of employers as well as of labor when it thought that the civil liberties of either were being threatened. The American Civil Liberties Union was founded upon the principle that where the civil liberties of one group or even of one person are threatened, the freedom of all is endangered. It has also been motivated in its activities by the principle expressed by this Court in the recent case of *Thomas v. Collins* (decided January 8, 1945; Docket No. 14) as follows:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

It is with this larger view that we are concerned. We therefore ask leave to file this brief as *amicus curiae* because we believe that Sections 2 (2), 4 and 6 of the Florida statute (Chap. 21968, Laws of Florida, Acts of 1943, generally referred to as H. B. 142), here under review, violate the constitutional guarantees of freedom of speech, press, assembly and petition, and those against deprivation of liberty without due process of law.

In joining with the petitioners herein in attacking the Florida statute, we do not assert that labor unions are above the law. On the contrary, we agree with the statement of this Court in *Thomas v. Collins, supra:*

> "That the State has power to regulate labor unions with a view to protecting the public interest,

is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulation. Such regulation, however, whether aimed at fraud or other abuses, must not trespass upon domains set apart for free speech and free assembly."

But we submit that a regulatory statute must be directed toward an evil and designed to correct it. Such, we maintain, is not the purpose or effect of the Florida law now under review.

The vice of the statute here and of similar attempts at legislative control over the internal affairs of labor unions is that they weaken the autonomy and independence of the unions, and in so doing they threaten to destroy a most important democratic force in American life.

I

Section 4 violates the Fourteenth Amendment by imposing a previous general restraint on the civil rights of speech, press and assembly.

Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition (as stated in Section 2) of acting or attempting to act for any labor organization in "(a) the issuance of membership cards, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 4 also sets up qualifications for such paid union representatives and creates a board to pass upon applications and to issue such licenses.

The Florida Supreme Court upheld the constitutionality of the statute on the theory that labor unions are business organizations operating for profit, differing essentially from "religious bodies, chambers of commerce and like institutions", and that hence they are subject to the police power.

The American Civil Liberties Union rejects the view that labor unions should be treated as business organizations operating for profit. While unions have certain business aspects their most important function is a social one: to obtain for working men and women higher and better standards of life and in stabilizing industrial relations. The importance of unions in this capacity was recognized by Congress when it enacted the National Labor Relations Act, and has often been referred to by this Court. See, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548.

In the *Thomas* case, *supra*, this Court indicated that a line might be drawn between the public aspects of a labor union which could not be restricted and its commercial aspects which might be regulated by the state. There the Court was concerned with solicitation: it said that solicitation of members could not be the subject of license requirements, that solicitation of funds could be. If we assume the latter statement to represent the considered judgment of the Court, let us see how the distinction can be applied here.

We shall first look at the reason for the distinction. Solicitation of membership was held immune because it constituted a form of free speech. It was impossible, said the Court, to discuss the value of unions without suggest-

ing the desirability of joining them. Free speech and solicitation of membership thus merge imperceptibly. On the other hand the collection of dues is purely a business enterprise.

In the case at bar there is no question concerning the collection of dues or the solicitation of funds. The Florida law is not expressly concerned with these activities of unions. The activities described in the definition of "business agent", contained in Section 2 (2) make no reference to money, except with regard to the compensation of the "agent." If he is a volunteer he need not be licensed; if he receives any financial consideration whatever, he must be. The activities which form the criterion are the issuance of membership cards or other evidences of rights granted by the organization and the soliciting or receiving of privileges from the employer.

The first criterion is, we submit, a restriction on the right of free speech, since it is a serious curb on the right to solicit members held protected in the *Thomas* case. If this provision of law is valid then a paid organizer may address a group of workers and urge them to join his union, but when they come up to him to indicate their assent he may not sign them up, unless he be licensed. It is a restriction likewise on freedom of assembly because it limits the effectiveness of association.

The second criterion is also a serious restriction on freedom of assembly. For it is of the essence of an association of workers that they should seek to obtain redress of grievances, in the words of the statute to get a "right or privilege for employees" from an employer. Experience has demonstrated the desirability of entrusting this job to a paid employee of the union, rather than to a person subject to the discipline of the employer. The

statute conditions the exercise of this essential attribute of the association upon obtaining a license.

If it be argued that labor unions are capable of abuses which require regulation the plain answer is that this statute does not regulate any such abuses. Surely no one contends that an abuse has arisen because persons not authorized by the union issue membership cards or obtain privileges from employers. Yet, absent such abuse, what is the purpose of requiring that the applicant submit a statement from the president and the secretary of the union showing his authority to act? The truth of the matter is that this is a statute designed to interfere with the functioning of labor unions. That is evident from the requirement that no license can be issued at all during a thirty day period. This means that any expansion by a union would be blocked for that period at least—and might well be blocked much longer pending action by the board on the application, action which might be prolonged because of the requirement of the statute that the applicant be of good moral character. It should be noted, moreover, that applicants must not only be American citizens* but that the statutory naturalization period has here been doubled.

We submit that no license can be imposed on the basic activities here sought to be restricted. Such is the intent of the decisions of this Court ever since *Lovell* v. *Griffin*, 303 U. S. 444. See also *Hague* v. *C.I.O.*, 307 U. S. 496; *Schneider* v. *Irvington*, 308 U. S. 146; *Thornhill* v. *Alabama*, 310 U. S. 88; *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Martin* v. *City of Struthers*, 319 U. S. 141; *Follett* v. *McCormick*, 321 U. S. 573.

* This restriction is invalid *Truax* v. *Raich*, 239 U. S. 33.

It is clear also from these cases that the regulations cannot be supported merely because limited to those who are paid for what they do. As Mr. Justice Douglas said in the *Follett* case:

> "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living." *Follett* v. *Town of McCormick*, 321 U. S. 573.

The right to require a license depends on the character of the thing to be licensed, not on whether the person to be licensed is a paid worker or a volunteer. The state may license commercial activity, it cannot license activity which involves freedom of speech, religion or assembly. What Florida has attempted by Sections 2 (2) and 4 is to license activities that are constitutionally protected. This it may not do.

II

Section 6 likewise violates the Fourteenth Amendment by imposing a previous general restraint on the civil rights of speech, press and assembly.

Section 6 requires every labor organization operating in the State to file an annual report with the Secretary of State stating its name, its location, the names and addresses of its officials, and to pay an annual fee. The injunction issued by the State courts in the case at bar prohibits the union petitioner from *functioning* as a labor organization with Florida unless it files such a report and pays the required fee. As so interpreted, Section 6 constitutes a licensing provision, requiring a union to obtain

a license as a condition of carrying on its normal and legitimate activities. *International Text Book Company* v. *Pigg*, 217 U. S. 91, 108. The requirement of the payment of an annual fee with the filing of the report similarly constitutes a license fee upon the right of labor organizations to function within the State of Florida. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

As already indicated in our discussion of Section 4, above, the rights of free speech, press and assembly may not be subject to a prior license or grant of permission. That the license fee here involved is only nominal does not save the licensing requirement from invalidity. *Grosjean* v. *American Press Company, supra; Thornhill* v. *Alabama, supra; Lovell* v. *Griffin, supra; Murdock* v. *Pennsylvania, supra.*

The various activities of a labor union which constitute the functioning of such an organization, and which Section 6 would prohibit unless the required reports were filed and the fees paid, are all within the area of rights protected by the Fourteenth Amendment against infringement by any State.

The very essence of a labor organization is the assemblage of working men and women into one association for their mutual protection. The right of employees thus to form themselves into labor unions has been recognized by this Court as "a fundamental right." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra.* See also *American Steel Foundries* v. *Tri-City Central Trades Council, supra; Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks, supra.*

An essential part of the functioning of a labor union is the holding of meetings. During an organizational drive, a union invites non-union employees to meetings to

explain to them the advantages of union membership. After employees have joined a union, they meet to discuss their common problems, to exchange information and views concerning such problems, to agree upon common action to solve their problems and generally to obtain improvements in their wages, hours and other conditions of employment. The right to hold such meetings is protected by the Constitution and may not be abridged or denied. *DeJonge* v. *Oregon*, 299 U. S. 353.

The process of collective bargaining and the making of collective agreements with employers are important functions of labor unions and are also fundamental rights. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra; Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks, supra; Virginian Railway Co.* v. *System Federation*, 300 U. S. 515.

When the collective bargaining process breaks down or an impasse is reached in negotiations, a union may have to resort to a strike and to picketing. These have likewise been recognized as constitutional rights by this Court. *Thornhill* v. *Alabama, supra; American Federation of Labor* v. *Swing*, 312 U. S. 321; *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478.

A functioning labor organization also constantly employs the printed word to spread its views. It publishes periodicals and leaflets for distribution to its own members, to non-union employees whom it is seeking to organize, and to the public generally. A State may not abridge this freedom. *Schneider* v. *Irvington, supra.*

Thus it is clear that by imposing a previous general restraint upon the functioning of labor organizations, Section 6 denies to members of such organizations their civil rights in violation of the Fourteenth Amendment.

Thomas v. *Collins*, *supra*, and *American Federation of Labor* v. *Reilly*, —— P. 2d —— (Colo.), are the two most recent judicial pronouncements on the general issue presented on this appeal.

In striking down the Texas statute requiring all labor union organizers to register and obtain an organizer's card, this Court said in the *Thomas* case:

> "The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly."

The Colorado statute involved in *American Federation of Labor* v. *Reilly*, *supra*, required all labor unions operating in that State to incorporate, and declared violations to be misdemeanors punishable by fine. The Colorado Supreme Court quoted with approval from the opinion of the trial court in that case, which held those provisions to be

> "• • • unconstitutional and inoperative and unenforceable for the reason that the same do require the prerequisite of incorporation for labor unions which, under its wording and provisions, does operate as a complete general previous restraint upon the exercise of the rights of free speech, free press and assembly, thus violating, in the opinion of the Court, the Due Process Clause of the Fourteenth Amendment of the Federal Constitution considered in conjunction with the First Amendment • • • "

In a well reasoned opinion citing numerous decisions by this Court and by various State Courts, the Colorado Supreme Court held that "the conclusions of the trial court were sound and that its judgment as to the points in consideration must be affirmed."

In practical operation and effect the restraint imposed by the filing requirements of Section 6 of the Florida statute is of the same character as that imposed by the requirement for incorporation under the Colorado statute.

Under the authorities cited and discussed above, it is evident that Section 6 violates the Fourteenth Amendment.

III

Section 2 (2), upon which Section 4 is dependent, violates the "due process" clause of the Fourteenth Amendment because of its vagueness.

The licensing provisions of Section 4 are applicable to a "business agent", which term is defined in Section 2 (2) as

> "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege from employees."

Since under Section 14 any person violating any provision of the Act is guilty of a misdemeanor and punishable by fine, imprisonment, or both, we respectfully submit that Section 4 contravenes the Fourteenth Amendment. It is well settled by decisions of this Court that a criminal statute which is so vague, indefinite or uncertain that its application or meaning are not reasonably ascertainable does not fulfill the requirements of

due process under the Fifth and Fourteenth Amendments. *Lanzetta* v. *New Jersey*, 306 U. S. 451; *Herndon* v. *Lowry*, 301 U. S. 242; *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

In the *Lanzetta* case, this Court said (at page 453):

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids . . .
>
> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play, and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law."

Judged by this standard, can it be asserted that the meaning of the words "pecuniary or financial consideration" is free of doubt? Does a worker who is a member of a grievance committee in a plant become a "business agent" under this definition because he is reimbursed by the union for the time lost by him from his work while acting as such committee member? Does the definition cover an attorney who is paid a fee by a union for assisting in the negotiation of a collective agreement or in the settlement of a labor dispute with an employer, so as to require the attorney to obtain a license under the Act?

What is meant by "authorization cards" and "work permit"? What constitutes "evidence of rights granted

or claimed in, or by, a labor organization"? Do these words cover a collective agreement? And if so, does an attorney for a union need a license before he may draw up such an agreement for his client? What is meant by the "issuance" of such evidence of rights? What constitutes "receiving from an employer any right or privilege for employees"? Would that include the acts of an attorney who, by instituting an action under Section 16 (b) of the Fair Labor Standards Act, collects overtime pay from an employer on behalf of employees?

A statute which is so ambiguous cannot be sustained.

CONCLUSION

It is respectfully submitted that Sections 4 and 6 of Chapter 21968, Laws of Florida, Acts of 1943, are unconstitutional for the reasons set forth above.

Respectfully submitted.

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
ARTHUR GARFIELD HAYS,
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JOHN M. COE,
LEONARD COOPERMAN,
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DAVID I. ASHER,
OSMOND K. FRAENKEL,
Of the New York Bar,
Of Counsel.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1944

No. 811

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,

Petitioners,

vs.

STATE OF FLORIDA ex rel. J. TOM WATSON, Attorney General.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE WORKERS DEFENSE LEAGUE, *AMICUS CURIAE*

PAUL O'DWYER,
New York, N. Y.,
Attorney for the Workers Defense League, *Amicus Curiae.*

MAX DELSON,
CARL RACHLIN,
LEONARD COHEN,
New York, N. Y.,
of Counsel.

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable the Supreme Court of the United States:

The undersigned, as counsel for the Workers Defense League, respectfully moves this Honorable Court for leave to file the accompanying brief in the above entitled case as *amicus curiae*. Consent of the attorneys for the petitioners has been obtained to the filing of the brief. Although requested, counsel for the respondents has not so consented. The interest of the Workers Defense League is that of a non-partisan, non-profit organization interested in the furtherance of democratic principles and the upholding of the legal and constitutional rights of the American citizen.

Paul O'Dwyer,
New York, N. Y.,
Attorney for the Workers Defense League, *Amicus Curiae*.

March 20, 1945.

Supreme Court of the United States

OCTOBER TERM, 1944

No. 811

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,

Petitioners,

vs.

STATE OF FLORIDA ex rel. J. TOM WATSON, Attorney General.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF THE WORKERS DEFENSE LEAGUE AS *AMICUS CURIAE*

The Workers Defense League respectfully requests permission of this honorable Court to appear as *amicus curiae* and urges that Sections 4 and 6 of chapter 21968, Laws of Florida Acts of 1943 be declared unconstitutional. The interest of the Workers Defense League in this case is set forth in the companion case of *Alabama State Federation of Labor* v. *McAdory*, argued simultaneously herewith.

Synopsis of Sections 4 and 6 of the Act

Section 4 of the Florida Act provides that in order to obtain a license as a business agent in Florida, one must

a. be a citizen in residence of the United States for ten years

b. not have been convicted of a felony

c. be a person of good moral character

The application is then held by the Secretary of State for thirty days. At the expiration of this period, it is referred to a board, which, if the applicant is found qualified, pursuant to this Act, shall authorize the Secretary of State to issue a license.

Section 6 of the Florida Act provides that a labor organization operating in Florida must report annually

a. the name of the organization

b. its location

c. the name and address of the president, secretary, treasurer and business agent.

At this time, the organization shall pay the annual fee of one dollar.

I

In connection with Section 6 of the Act, we respectfully refer this Court to Points 1 and 3 in the brief of the Workers Defense League in the *McAdory* case. Enjoining the activities of the Union as did the Court below, highlights the evil inherent in the Act permitting a prior restraint upon the constitutional rights guaranteed to the petitioners under the First Amendment.

II

Section 4 of the Act deprives petitioner of rights guaranteed by the First Amendment of the United States Constitution and protected from arbitrary action by the State under the Fourteenth Amendment.

The activities of a business agent of a union are directly concerned with the functions of the Union in the manner of solicitation of members, representation of the Union in collective bargaining, organization of concerted activities and general educational functions of a union. These rights have been constitutionally guaranteed by this Court.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1.
Thornhill v. *Alabama*, 310 U. S. 88.
American Steel Foundries v. *Tri-City Central Council*, 257 U. S. 184.

The provisions of Section 4 investing the Board with this discretionary power to grant or refuse a license upon its own evaluation of the good moral character of the applicant is an improper restriction upon these rights.

Cantwell v. *Conn*, 310 U. S. 296.
Hague v. *C.I.O.*, 307 U. S. 496.
Lovell v. *Griffin*, 303 U. S. 444.
Largent v. *Texas*, 318 U. S. 418.

The injunction against the petitioner Hill deprived him of the right to free speech necessarily inherent in his position as shown above. *Thomas* v. *Collins*, —— U. S. ——, 65 S. Ct. 315.

The Court below sought to justify the injunction against Hill and the Union on the ground that the petitioners were concerned with the "making of a living" unlike chambers

of commerce. It should be observed that unions are non-profit organizations solely devoted to the economic and educational betterment of their members.

The issue, however, is wider in scope than that set forth by the Court below. The Act does not define a "business agent" of a union and would include any member of the Union designated to organize, solicit members, bargain collectively or carry on one or all of the functions of a union. Under the guise of regulating the "profession" of business agent the Board has the capricious power to limit and regulate the activities of the Union itself.

In addition the requirement of ten years residence and citizenship in the United States (three years more than required of a member of the United States House of Representatives, U. S. Const., Article I, Sec. 2 C1.2), is so arbitrary and unreasonable as to be, on its face, a denial of the protection of the Fourteenth Amendment. *Truax* v. *Raich*, 239 U. S. 33.

CONCLUSION

It is respectfully submitted that Sections 4 and 6 of the Act and the injunction issued thereunder denies to petitioners the rights secured by the First and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

PAUL O'DWYER,
New York, N. Y.,
Attorney for the Workers Defense League, *Amicus Curiae*.

MAX DELSON,
CARL RACHLIN,
LEONARD COHEN,
New York, N. Y.,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 811.—October Term, 1944.

Leo H. Hill and United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local #234, Petitioners,
vs.
State of Florida, *ex rel.* J. Tom Watson, Attorney General.

On Writ of Certiorari to the Supreme Court of Florida.

[June 11, 1945.]

Mr. Justice Black delivered the opinion of the Court.

The only question we find it necessary to decide in this case is whether a Florida statute[1] regulating labor union activities has been applied to these petitioners in a manner which brings it into irreconcilable conflict with the collective bargaining regulations of the National Labor Relations Act. 49 Stat. 449. That Federal Act, we decided in *Allen-Bradley Local* v. *Labor Board*, 315 U. S. 740, did not wholly foreclose state power to regulate labor union activities. Certain conduct, such as mass picketing, threats, violence, and related actions, we held were not governed by the Wagner Act, and hence, Wisconsin was free to regulate them. We carefully pointed out, however, that, had the state order under consideration, "affected the status of the employees, or . . . caused a forfeiture of collective bargaining rights, a distinctly different question would arise." That question which we so distinctly reserved in the *Wisconsin* case has now arisen in this case.

The Attorney General of Florida filed a bill for injunction against the petitioner union and its business agent, Hill, in a state court. He sought to restrain both of them from functioning as such until they had complied with the Florida statute. The basis for the relief sought against Hill was that he had for a pecuniary reward acted as a business agent in violation of Section 4; the basis for the relief sought against the union was that it had operated without obtaining a state license as required by Section 6. Section 4, which was invoked against Hill, provides that no one shall be licensed as a "business agent" of a labor union who has not been a citizen of the United States for more than 10 years, who has been convicted of a felony, or who is not a person of good moral character. Application for a license as a "business

[1] House Bill No. 142, Laws of Florida, 1943, Chap. 21968, 565.

agent" must be accompanied by a $1.00 fee and a statement signed by officers of the union setting forth the agent's authority. The statute then provides that the application be held for 30 days to permit the filing of objections to the issuance of a license. A Board composed of the Governor, the Secretary of State, and the Superintendent of Education, then passes on the application, and if it finds the applicant measures up to the standards of the act, as it sees them, it authorizes the license to be issued, to "expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked." Section 2(2) defines "business agent" as "any person who shall for a pecuniary or financial consideration act or attempt to act" for a union "in soliciting or receiving from any employer any right or privilege for employees . . ." or "in the issuance of membership or authorization cards, work permits or any other evidence of rights granted or claimed in, or by, a labor organization . . . ." Section 6, which the Attorney-General invoked against the union, requires every labor union "operating" in the state to file a written report with the Secretary of State, disclosing its name, the location of its offices, and the names and addresses of its officers. Section 14 makes it a misdemeanor for "any person or labor organization" to violate the statute.

Motions by Hill and the union to dismiss the bill on the ground that the state statute violated the Fourteenth Amendment and conflicted with the Wagner Act were denied. Answers were then filed admitting violations of Sections 4 and 6. The court held the licensing and reporting provisions valid. Hill was enjoined from further acting as the union's business agent until he obtained a state license. The union was enjoined from further functioning and operating until it made the report and paid the fee to the Secretary of State. The State Supreme Court affirmed. 19 So. 2d 857.

It is apparent that the Florida statute has been so construed and applied that the union and its selected representative are prohibited from functioning as collective bargaining agents, or in any other capacity, except upon conditions fixed by Florida. The declared purpose of the Wagner Act, as shown in its first section, is to encourage collective bargaining, and to protect the "full freedom" of workers in the selection of bargaining representatives of their own choice. To this end Congress made it illegal for an employer to interfere with, restrain or coerce employees in selecting their representatives. Congress attached no condition

whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. "Full freedom" to choose an agent means freedom to pass upon that agent's qualifications.

Section 4 of the Florida act circumscribes the "full freedom" of choice which Congress said employees should possess. It does this by requiring a "business agent" to prove to the satisfaction of a Florida Board that he measures up to standards set by the State of Florida as one who, among other things, performs the exact function of a collective bargaining representative. To the extent that Section 4 limits a union's choice of such an "agent" or bargaining representative, it substitutes Florida's judgment for the workers' judgment.

Thus, the "full freedom" of employees in collective bargaining which Congress envisioned as essential to protect the free flow of commerce among the states would be, by the Florida statute, shrunk to a greatly limited freedom. No elaboration seems required to demonstrate that Section 4 as applied here "stands as an obstacle to the accomplishment and execution of the full purposes and objections of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148; *Napier* v. *Atlantic, C. L. R. Co.*, 272 U. S. 605. It is not amiss, however, to call attention to the fact that operation of this very section has already interfered with the collective bargaining process. An employer before the Labor Board defended its refusal to bargain with a duly selected representative of workers on the ground that the representative had not secured a Florida license as a business agent. *In the Matter of Eppinger & Russell Co., et al.*, 56 N. L. R. B. 1259. The Board properly rejected the employer's contention, holding that Congress did not intend to subject the "full freedom" of employees to the eroding process of "varied and perhaps conflicting provisions of state enactments." Cf. *N. L. R. B.* v. *Hearst Publications, Inc., etc.*, 322 U. S. 111.

Since the Labor Board has held that an employer must bargain with a properly selected union agent despite his failure to secure a Florida license, it is argued that the state law does not interfere with the collective bargaining process. But here, this agent has been enjoined, and if the Florida law is valid he could be found guilty of a contempt for doing that which the act of Congress permits him to do. Furthermore, he could, under Section 14 of the state law, be convicted of a misdemeanor and subjected to fine and imprisonment. The collective bargaining which Congress has

authorized contemplates two parties free to bargain, and cannot thus be frustrated by state legislation. We hold that Section 4 of the Florida Act is repugnant to the National Labor Relations Act.

Section 6, as here applied, stands no better. The requirement as to the finding of information and the payment of a $1.00 annual fee does not, in and of itself, conflict with the Federal Act. But for failure to comply, this union has been enjoined from functioning as a labor union. It could not without violating the injunction and also subjecting itself to the possibility of criminal punishment even attempt to bargain to settle a controversy or a strike. It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining. Cf. *Western Union Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, 553, 554; *Kansas City S. R. Co.* v. *Kaw Valley Drainage District*, 233 U. S. 75, 78; *St. Louis S. W. Ry.* v. *Arkansas*, 235 U. S. 350, 368. This is true because if the union or its representatives acted as bargaining agents without making the required reports, presumably they would be liable both to punishment for contempt of court and to conviction under the misdemeanor section of the act. Such an obstacle to collective bargaining cannot be created consistently with the Federal Act.

Nor can it be argued that our decision in *Thomas* v. *Collins*, 323 U. S. —, forecloses such result. In that case we did not have, as here, to deal with such a direct impediment to the free exercise of the federally established right to collective bargaining.

Our holding is that the National Labor Relations Act and Sections 4 and 6 of the Florida Act as here applied cannot "move freely within the orbit of their respective purposes without infringing upon one another." *Union Brokerage Co.* v. *Jensen*, 322 U. S. 203, 207.[2] Accordingly the case is reversed and remanded for proceedings not inconsistent with this opinion.

Reversed and Remanded.

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[2] The National Labor Relations Act applies only to activities which affect interstate commerce. Labor Board v. Jones & Laughlin, 301 U. S. 1, 29, 30. The original bill for an injunction prayed that this union might be restrained from functioning as a union in connection with employees of the St. Johns River Shipbuilding Co. of Jacksonville, Florida, which company has been held by the Labor Board to be engaged in interstate commerce and subject to the Federal Act. Matter of St. Johns River Shipbuilding Co. 52 N. L. R. B. 12; 52 N. L. R. B. 958; 55 N. L. R. B. 1451; 59 N. L. R. B. No. 83; 60 N. L. R. B. No. 55. The case was submitted on the pleadings, which assume that interstate commerce questions were involved. The Supreme Court of Florida so treated the case in holding that there was no constitutionally prohibited conflict between the Florida and Federal Acts.

Mr. Chief Justice STONE.

I concur in so much of the opinion as finds conflict between the licensing provisions of the Florida statute and the National Labor Relations Act. I do so only on the ground that the command of § 7 of the National Labor Relations Act that "employees shall have the right . . . to bargain collectively through representatives of their own choosing" conflicts with the licensing provisions of the Florida Act purporting to fix the qualifications of business agents of labor organizations.

This, of course, does not mean that labor unions or their officers are immune, in other respects, from the exercise of the state's police power to punish fraud, violence, or other forms of misconduct, either because of the commerce clause or the National Labor Relations Act. It is familiar ground that the commerce clause does not itself preclude a state from regulating those matters which, not being themselves interstate commerce, nevertheless affect the commerce, *California* v. *Thompson,* 313 U. S. 109, 113-114, 116, and cases cited; *Parker* v. *Brown,* 317 U. S. 341, 360, and cases cited, and that the state's authority is curtailed only as Congress may by law prescribe in the exercise of the commerce power: *United States* v. *Darby,* 312 U. S. 100, 119, and cases cited. I can find nothing in the National Labor Relations Act or its legislative history to suggest a Congressional purpose to withdraw the punishment of fraud or violence, or the violation of any state law otherwise valid, from the state's power merely because the state might subject the business agent of a labor union, who violates its law, to imprisonment, which would prevent his functioning as a bargaining agent for employees under the National Labor Relations Act. *Allen-Bradley Local* v. *Board,* 315 U. S. 740, 748. See S. Rep. No. 573, 74th Cong., 1st Sess.; H. Rep. No. 1147, 74th Cong., 1st Sess.

For the same reasons, the National Labor Relations Act does not preclude a state from requiring a labor union, or its officers and agents, as such, to procure licenses or make reports or perform other duties which do not materially obstruct the exercise of rights conferred by the National Labor Relations Act or other federal legislation. *Thomas* v. *Collins,* 323 U. S. 516, 542. But it is quite another matter to say that a state may fix standards or qualifications for labor unions and their officers and agents which would preclude any of them from being chosen and from func-

tioning as bargaining agents under § 7 of the National Labor Relations Act. The right conferred on employees to bargain collectively through a representative of their own choosing is the foundation of the National Labor Relations Act. Without that right, or if it were restricted by state action, the Act as drawn would have little scope for operation. The fact that the National Labor Relations Act imposes sanctions on the employer alone does not mean that it did not, by § 7, confer the right on employees as against others as well as the employer to make an uninhibited choice of their bargaining agents. Cf. *United States* v. *Hutcheson,* 312 U. S. 219. Section 7 confers the right of choice generally on employees and not merely as against the employer.

I dissent from so much of the opinion as holds that § 6 of the Florida statute, as applied, is invalid, because it conflicts with the National Labor Relations Act. The requirement of filing by a labor organization of the information prescribed by § 6, accompanied by a filing fee of $1.00, is, as the opinion of the Court recognizes, not incompatible with the National Labor Relations Act, since it in no substantial way hinders or interferes with the performance of the union's functions under that Act. *Thomas* v. *Collins, supra,* 542; cf. *N. W. Bell Tel. Co.* v. *Ry. Comm'n,* 297 U. S. 471, 478; see *Smith* v. *Illinois Bell Tel. Co.,* 282 U. S. 133; *Western Distributing Co.* v. *Public Service Comm'n,* 285 U. S. 119; *Dayton Power & L. Co.* v. *Public Utilities Comm'n,* 292 U. S. 290; *Natural Gas Co.* v. *Slattery,* 302 U. S. 300, 306.

Notwithstanding the conflict between the commerce clause or the federal statute and the local regulation which was found in *Western Union Telegraph Co.* v. *Massachusetts,* 125 U. S. 530, 554, and *St. Louis S. W. Ry.* v. *Arkansas,* 235 U. S. 350, 368, I can find no logical or persuasive legal ground or practical reason for saying that Congress by the enactment of the National Labor Relations Act intended to preclude the state from exercising to the utmost extent its sovereign power to enforce the lawful demands of § 6 of the Florida Act. There is no more occasion for implying such a Congressional purpose where the union is prevented from functioning by punishment or injunction, for a violation of a valid state law, than for saying that Congress, by the National Labor Relations Act, intended to forbid the states to arrest and imprison a labor leader for the violation of any other valid state law, because that would prevent his or the union's functioning under the National Labor Relations Act. The question is wholly one of state power. Here the state power is not restricted by the

commerce clause standing alone, nor, so far as I can see, by any Congressional intention expressed in the provisions of the National Labor Relations Act. *Union Brokerage Company* v. *Jensen*, 322 U. S. 202, 206.

Mr. Justice FRANKFURTER, dissenting.

The Court is striking down a State law not because such a statute in and of itself is beyond the power of a State to enact. The Florida statute is nullified because, so Florida is told, Congress has barred Florida from this lawmaking, although Congress has neither expressly nor by fair inference forbidden Florida to deal with the matter with which Florida has dealt and Congress has not. Concretely, Congress by protecting employees in their right to choose representatives for collective bargaining free from the coercion or influence of employers did not impliedly wipe out the right of States under their police power to require qualifications appropriate for union officials having fiduciary duties.

It was settled early in our constitutional history that the mere fact that Congress has power to regulate commerce among the several States does not exclude State legislation in the exercise of the police power, even though it may affect such commerce, where the subject matter does not demand a nation-wide rule. *Wilson* v. *The Blackbird Creek Marsh Company*, 2 Pet. 245; *Cooley* v. *Board of Wardens*, 12 How. 299, 319. The States, in short, may speak on matters even in the general domain of commerce so long as Congress is silent. But when Congress has spoken, although not as fully as the Constitution authorizes, that is, when a federal enactment falls short of the Congressional power to legislate touching commerce, the States may still speak where Congress is still silent. The real question is: Has Congress spoken so as to silence the States? The same regard for the harmonious balance of our federal system, whereby the States may protect local interests despite the dormant Commerce Clause, allows State legislation for the protection of local interests so long as Congress has not supplanted local regulation either by a regulation of its own or by an unmistakable indication that there is to be no regulation at all. The relation of such enactments of local concern to federal enactments which fall short of the full reach of the Constitution raises a problem of judicial judgment similar to that presented where a State law encounters no federal statute. The problem is one of judicial accommodation between respect for the

supplanting authority of Congress and the reserved police power of the States. Long ago this policy of accommodation was formulated by this Court: "We agree, that in the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together". *Sinnott* v. *Davenport*, 22 How. 227, 243.

But conflicts between State laws regulating aspects of business enterprise and federal enactments relating to such aspects were few and far between in the first hundred years of our history. Apart from taxes and tariffs, the regulation of fisheries, and measures dealing with the coastwise trade, there was little intervention by federal legislation in the affairs of men until, in 1887, the Interstate Commerce Act initiated the tide of federal regulation. Since then, this Court has often had to deal with the claim that a federal statute, though only partially regulating a particular phase of commerce, superseded State legislation in the exercise of the police power bearing upon that phase.

In a great variety of cases, the Court has applied the accommodation formulated in *Sinnott* v. *Davenport*, *supra*, and either reasserted or reinforced that policy. The emphasis has been on recognizing that both the State law and the federal statute must be allowed to prevail if they may prevail together—that is, if they do not, as a matter of language or practical enforcement, collide, or if Congress has not manifested an unambiguous purpose that there be no regulation, either State or federal, as to matters for which it has not prescribed. This judicial principle is established by an impressive body of opinions. A few samples must suffice:

> 1. "May not these statutory provisions stand without obstructing or embarrassing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together." *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U. S. 613, 623.

> 2. "It should never be held that Congress intends to supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested. . . .

"The principle is universal that legislation, whether by Congress or by a State, must be taken to be valid, unless the contrary is made clearly to appear; and as the contrary does not so appear, the statute of Colorado is to be taken as a constitutional exercise of the power of the State." *Reid* v. *Colorado*, 187 U. S. 137, 148, 153.

3. "Is, then, a denial to the State of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. . . .

"But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration." *Savage* v. *Jones*, 225 U. S. 501, 533.

4. "These cases recognize the established rule that a state law enacted under any of the reserved powers—especially if under the police power—is not to be set aside as inconsistent with an act of Congress, unless there is actual repugnancy, or unless Congress has, at least, manifested a purpose to exercise its paramount authority over the subject. The rule rests upon fundamental grounds that should not be disregarded." *Missouri, Kansas & Texas Ry. Co.* v. *Harris*, 234 U. S. 412, 418-419.

5. "In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested." *Ill. Cent. R. R. Co.* v. *Public Utilities Comm.*, 245 U. S. 493, 510.

6. "The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the federal legislation is not to be

implied unless the Act of Congress fairly interpreted is in conflict with the law of the State." *Atchison Ry.* v. *Railroad Comm.*, 283 U. S. 380, 392-393.

7. "Unless limited by the exercise of federal authority under the commerce clause, the State has power to make and enforce the order. The purpose of Congress to supersede or exclude state action against the ravages of the disease is not lightly to be inferred. The intention so to do must definitely and clearly appear." *Mintz* v. *Baldwin*, 289 U. S. 346, 350.

8. "The power conferred upon the Congress is such that when exerted it excludes and supersedes state legislation in respect of the same matter. But Congress may so circumscribe its regulation as to leave a part of the subject open to state action. *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280, 290. Cf. *Napier* v. *Atlantic Coast Line*, 272 U. S. 605. The purpose exclusively to regulate need not be specifically declared. *New York Central R. Co.* v. *Winfield*, 244 U. S. 147. But, ordinarily such intention will not be implied unless, when fairly interpreted, the federal measure is plainly inconsistent with state regulation of the same matter." *Gilvary* v. *Cuyahoga Valley Ry.*, 292 U. S. 57, 60.

9. "The case calls for the application of the well-established principle that Congress may circumscribe its regulation and occupy a limited field, and that the intent to supersede the exercise by the State of its police power as to matters not covered by the federal legislation is not to be implied unless the latter fairly interpreted is in actual conflict with the state law. *Townsend* v. *Yeomans*, 301 U. S. 441, 454.

10. "States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulation shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'" *Kelly* v. *Washington*, 302 U. S. 1, 10.

These rules of respect for the allowable area of State law have not been ceremonial phrases dishonored in observance. Deviations from this policy have been very rare, considering the fact

that we are dealing not with a mathematical formula but with the application of a constitutional doctrine by judicial judgment. The deviations have been so rare all these decades, despite the changes in the Court, because of fidelity to the purposes of this vital aspect of our federalism.

A survey of the scores of cases in which the claim has been made that State action cannot survive some contradictory command of Congress leaves no doubt that State action has not been set aside on mere generalities about Congress having "occupied the field", or on the basis of loose talk instead of demonstrations about "conflict" between State and federal action. We are in the domain of government and practical affairs, and this Court has not stifled State action, unless what the State has required, in the light of what Congress has ordered, would truly entail contradictory duties or make actual, not argumentative, inroads on what Congress has commanded or forbidden.

Since the bulk of federal regulatory legislation has until recently been concerned with the great interstate utilities, the cases dealing with the relation of State to federal legislation in this field shed most light on the question before us. Moreover, these present situations least favorable to tolerance for State legislation. The need for national control, with corresponding restriction of local regulation, is presumably most powerfully asserted where interstate transportation and communication are involved.

The range and particularity of federal legislation regulating railroads, expressed in a long series of enactments, have given rise to most of the cases in which State action has been found in conflict with federal action. Once Congress established a uniform federal rule concerning liability for freight loss or damage in place of the variegated rules of the several States, State policy "differently conceived" had to yield. *Charleston & Car. R. R.* v. *Varnville Co.*, 237 U. S. 597, 604. The comprehensive control over railroad rates, progressively exercised by Congress, necessarily displaced much prior State law. And so, the permissive power of States to deal with aspects of transportation in the absence of federal law ceased when State action ran counter to the specific requirements of the Hepburn Act. *Southern Ry. Co.* v. *Reid*, 222 U. S. 424; *Chi., R. I. & P. Ry.* v. *Hardwick Elevator Co.*, 226 U. S. 426. State regulation of the hours of railroad employees could not survive a Congressional policy as to hours of service. *Nor. Pac. Ry.* v. *Washington*, 222 U. S. 370. Explicit-

ness by Congress relating to the equipping of freight cars with safety appliances superseded a State law dealing differently with such safety requirements. *Southern Ry. Co.* v. *R. R. Comm., Indiana*, 236 U. S. 439. When Congress saw fit to define in the Federal Employees Liability Act a carrier's responsibility for the death or injury of its employees, a State could not assert a different basis of responsibility. *N. Y. Central R. R. Co.* v. *Winfield*, 244 U. S. 147. Uniform standards set by the Interstate Commerce Commission for the equipment of locomotives preclude different requirements for such equipment by the States. *Napier* v. *Atlantic Coast Line*, 272 U. S. 605. But merely because regulatory power is possessed by a federal agency does not displace State regulation if no federal standards are set. See *Welch Co.* v. *New Hampshire*, 306 U. S. 79; *Eichholz* v. *Comm'n*, 306 U. S. 268. That even in this technical field a State is not denied the exercise of its police power beyond what is practically required by the actual use of federal power, is illustrated by the limited application given to *Penna. R. R. Co.* v. *Pub. Service Comm.*, 250 U. S. 566, in *Terminal Assn.* v. *Trainmen*, 318 U. S. 1.

These are illustrations of a closely knit body of regulations, full of technical implications, protected against incursions from local discriminations as to the very subject matter for which Congress deemed a national rule essential. There was, in short, concreteness of conflict between what a State prescribed and what Congress prescribed; the collision was demonstrable, not argumentative.

Even where the enforcement of a State statute carries international implications and thus deals with sensitive concerns peculiarly within the direction of federal authority, this Court only recently was slow to strike down an exercise of the State police power. When, in *Hines* v. *Davidowitz*, 312 U. S. 52, the United States strongly urged upon us that a Pennsylvania system of alien registration, established in 1939, had been superseded by the Federal Alien Registration Act of 1940, we did not displace the State law cavalierly, on the basis of loose inference and dogmatic assertion, but examined with painstaking care the particular requirements of Pennsylvania in order to ascertain whether, in their practical operation, they ran counter to the scheme as conceived by Congress and impinged upon its administration. A detailed examination of the long course of federal legislation affecting aliens, of which the Act of 1940 was the latest in a series, led the Court to conclude that Congress had "provided a standard

for alien registration in a single integrated and all-embracing system . . . through one uniform national registration system" to which Pennsylvania had to subordinate its local policy. 312 U. S. 52, 74. Even this conclusion evoked a weighty dissent, and one cannot read the Court's opinion without an awareness that the case presented a close question. Shortly after this decision we unanimously made it clear that *Hines* v. *Davidowitz* was not intended to relax the requirement of practical and effective conflict between a State law and a federal enactment before a State police measure can be nullified, and that the international bearing of the circumstances made persuasive the finding of conflict in that case. What was said about *Hines* v. *Davidowitz* in *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 749, is precisely relevant here:

> "In the *Hines* case, a federal system of alien registration was held to supersede a state system of registration. But there we were dealing with a problem which had an impact on the general field of foreign relations. The delicacy of the issues which were posed alone raised grave questions as to the propriety of allowing a state system of regulation to function alongside of a federal system. In that field, any 'concurrent state power that may exist is restricted to the narrowest of limits.' p. 68. Therefore, we were more ready to conclude that a federal Act in a field that touched international relations superseded state regulation than we were in those cases where a State was exercising its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. *Maurer* v. *Hamilton*, [309 U. S. 598] *supra*, and cases cited. Here, we are dealing with the latter type of problem. We will not lightly infer that Congress by the mere passage of a federal Act has impaired the traditional sovereignty of the several States in that regard."

In truth, when a State statute is assailed because of alleged conflict with a federal law, the same considerations of forbearance, the same regard for the lawmaking power of States, should guide the judicial judgment as when this Court is asked to declare a statute unconstitutional outright. The problem of conflict arises only when the States have power concurrent with Congress to legislate; to find conflict is merely a form of denying the power of legislation to the States. Except in rare instances, as already indicated, this Court has been extremely cautious in upsetting State regulation unless it has found that the regulation devised by Congress and that by which the State dealt with some local concern cannot, in a practical world, coexist. Only then has the

Court been justified in holding that Congress has manifested its will to displace the constitutional authority of the State. To strike down a State law when that which a State requires does not truly hinder or obstruct federal regulation is unwarrantably to deprive the States of their constitutional power.

These are the principles which have been recognized and applied by the vast body of the decisions of this Court, and they are the principles that should determine the fate of the Florida legislation now here for judgment.

By legislation known as the Bradford Act, Florida, in 1943, undertook to regulate labor unions and their officers. House Bill No. 142, Laws of Florida, 1943, Ch. 21968, p. 565. That Act prohibits any person from acting as a "business agent" for any "labor organization" without having obtained a license. Section 9(6). In order to obtain such a license, for a fee of one dollar, a person must file with the Secretary of State an application under oath, accompanied by a statement showing the applicant's authority to act as business agent, vouched for by the president and secretary of the labor organization. To permit the filing of objections to granting the license, the application must be held on file for thirty days. Thereafter, the application, with all relevant documents, goes to a Board composed of the Governor, the Secretary of State and the Superintendent of Education. On finding the applicant qualified, the Board must authorize the Secretary of State to issue a license for the calendar year. A license may not be issued to any person who has not been a citizen and resident of the United States for at least ten years, or who has been convicted of a felony, or who is not of good moral character. Section 4. Another provision of the Act requires every "labor organization operating in the State of Florida" to file an annual report with the Secretary of State giving the name of the organization, the location of its office, the names and addresses of the president, secretary, treasurer and business agent. A filing fee of one dollar is required. Section 6. A penal provision provides for fines not exceeding $500, or six months imprisonment, or both, for violation of the Act by any person or labor organization. Section 14.

The Attorney General of Florida sought and obtained from a Florida Circuit Court an injunction forbidding the petitioner, United Association of Journeymen Plumbers and Steamfitters, Local No. 234, from functioning as a labor union until it had complied with the requirements of § 6, and forbidding petitioner

Hill from acting as business agent for the Association until he had procured the license required by § 4. The Supreme Court of Florida affirmed the injunction. 19 So. (2d) 857. This Court reverses the Florida decision by concluding that the National Labor Relations Act, familiarly known as the Wagner Act, 49 Stat. 449, 29 U. S. C. § 151 *et seq.*, debarred Florida from dealing with the matters with which her legislation dealt.

The Court reaches this conclusion rather summarily, as though the conflict between the Wagner Act and the Bradford Act is too obvious for argument. Considering the fact that this case involves what so often has been characterized as the most delicate function of this Court, that of invalidating legislation, the issue cannot be disposed of so easily.

While employer-employee relations on railroads have been the subject of Congressional legislation for more than half a century, giving rise to a more and more comprehensive scheme of federal regulation, as to such relations in industry generally Congress abstained from regulation until 1935. Its first essay in this field was professedly very limited in scope. Not content with setting forth the central aim of the Wagner Act in the legislative reports, Congress in the Act itself defined its purposes. In view of the inequality between organized employers and employees devoid of "full freedom of association or actual liberty of contract", and of the "denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining", it was "declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." Section 1. To that end § 8, the heart of the Act, enumerated conduct by employers which the National Labor Relations Board was established to prevent. Section 10. It is an accurate summary of the Wagner Act to say that it aimed to equalize bargaining power between industrial employees and their employers by putting federal law behind the employees' right of association. The whole plan or scheme of the Wagner Act was to enable employees to bargain on a fair basis, freed from "restraint or coercion by their employer" through the

protection given by the federal government. *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 33.

All proposals to make of the Wagner Act a more comprehensive industrial code, by dealing with the conduct of employees and their unions, were rejected. The rights Congress created, the obligations it defined, the machinery it devised for enforcing these rights and securing obedience to these obligations, all were exclusively concerned with putting the strength of the Government against this conduct by employers. All other aspects of industrial relations were left untouched by the Wagner Act, and purposely so. All activities or aspects of labor organizations outside of their right to be free from employer coercion were left wholly unregulated by that Act. Neither expressly nor by indirection did the Wagner Act displace whatever police power the States may have to deal with those aspects of the life of a trade union as to which Congress, with eyes wide open, refused to legislate. When Congress purposely dealt only with the employer aspect of industrial relations and purposely abstained from making any rules touching union activities, the internal affairs of unions, or the responsibility of union officials to union members and to the public, Congress certainly did not sponge out the States' police power as to these matters. It wipes out State power and distorts Congressional intention to disregard the limited policy explicitly set forth by Congress. That policy—curbing of employer interferences with union rights—was scrupulously observed by Congress in the substantive provisions as well as in the enforcement structure of the Act. There is not a breath in the Act referring to any aspect of union activity unrelated to employer interference therewith. By refusing to legislate beyond that, Congress did not forbid the States from so legislating.

If Congress to-morrow chose to subject labor organizations and their officers to regulations similar to those dealt with in the Florida law, it could hardly be suggested that the Wagner Act, as it now stands, already covers these subjects. Specifically, if Congress were to make certain requirements for the filing of reports by labor organizations that seek to avail themselves of the rights defined by the Wagner Act, and also were to devise a system of identification and licensing of authorized representatives of the unions, one would be hard put to it to find anything in the Wagner Act to prove that it had already dealt with these matters. Congress may well believe that there is such a difference in local circumstances as to make it desirable to leave treatment of these matters to the

different localities. In any event, since these subjects are outside of the Wagner Act for purposes of making additions by federal law, they cannot be inside it to justify nullification of the Florida law. Whether the interests of union members or of outsiders call for an identification and licensing system for men discharging the responsibilities of business agents, it is not for us to determine. The only issue before us is whether Florida is free to deal with these matters when Congress has not done so. To repeat what was said in *Allen-Bradley Local* v. *Board, supra*, "We will not lightly infer that Congress by the mere passage of a federal Act"—this very Act—"has impaired the traditional sovereignty of the several States" over such police matters as are the concern of the Florida legislation.

If the Wagner Act has left Florida free to deal with these matters, Florida may not only legislate but also provide for enforcement of its legislation. In other words, if Florida may call for reports and require business agents to apply for licenses, of course Florida may provide appropriate sanctions for such regulations. If a union may properly be required to file a report and does not do so and therefore is prohibited from pursuing its industrial activities until it does file such a report, the State is not interfering with whatever rights the union may have under the Wagner Act. It will be time enough to consider such a claim of conflict, if anything that Florida may exact should, in a concrete situation, actively interfere with appropriate action by the National Labor Relations Board. In any event, we do not know the reach of the Florida Act. For all that appears the Supreme Court of Florida may construe the Act's requirements to apply only to intrastate activities of the union and its business agents.

The judgment should be affirmed.

Mr. Justice ROBERTS concurs in this dissent.